

N·S·A SUPREME ADMINISTRATIVE  
COURT OF POLAND

# ANNUAL REPORT

## 2019

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## 2019

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Outline of activities  
of the Supreme Administrative Court  
and Voivodship Administrative Courts  
in 2019



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*Prof. dr hab.*

**MAREK  
ZIRK-SADOWSKI**

President  
of the Supreme  
Administrative Court

## FOREWORD OF THE PRESIDENT OF THE SUPREME ADMINISTRATIVE COURT

*Administrative courts, within their jurisdiction,  
provide for the protection of rights and freedoms of everyone  
in relations with the public administration,  
shaped by authoritative decisions in various areas.  
Authoritative decision-making, not based on dialogue,  
participation and consultation, favours domination.  
This inequality of parties of legal relationship ceases  
in proceedings aimed at resolving a dispute between  
an individual and public administration  
by an independent court.*

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## FOREWORD

As far as the Polish administrative courts are concerned, the year 2019 was another year of intensive work both, in terms of judicial decisions and extra-judicial decisions, where the computerisation of proceedings before administrative courts should be primarily underlined. As of 31 May 2019, Parties to the proceedings before the administrative court have the possibility to communicate with the court electronically and to access case files in an electronic form. More and more persons use this method of communication with administrative courts. Implementation of this project was preceded with works in two areas: legislative and substantive-technical. The basic legal act regulating this new court-citizen relation is the Act of 17 February 2005 on the computerization of entities performing public tasks<sup>1</sup>. On the grounds of the amendment to this Act of 2014, the court-administrative procedure was changed and the term of entering amended provisions into force was introduced. On the grounds of the amendment to the Act – Law on proceedings before administrative courts and certain other acts<sup>2</sup> of April 2019 procedural provisions were adjusted to the performance of new tasks. In order to properly implement new solutions the Inter-structural Team for Monitoring Procedural Issues Related to the Computerisation of Administrative Court Proceedings was appointed at the Supreme Administrative Court.

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<sup>1</sup> Journal of Laws of 2019, items 700, 730, 848 and 1590.

<sup>2</sup> The Act of 12 April 2019 amending the Act – Law on Proceedings before Administrative Courts and Certain Other Acts (Journal of Laws of 2019, item 934).

Furthermore, in the field of non-judicial activities, I would like to underline the significance of the first scientific conference concerning the role and work of judge assistants, *Administrative Court Judge Assistant – Comparative Law and Practical Issues* organised in October 2019, in Warsaw, during which the floor was taken, apart from invited guests – judges of the Court of Justice of the European Union and research assistants from the highest administrative courts in the Czech Republic, Germany and Lithuania, by assistants of judges themselves.

It should be noted that in the scope of the judicial activities of administrative courts, in 2019, the inflow of cases to all 16 voivodship administrative courts increased in comparison with 2018 and amounted to slightly over 70 thousand cases. It means that administrative courts in Poland enjoy citizens' trust and have the social legitimacy to continue performing their systematic function. Despite such a high number of cases, in 2019, voivodship administrative courts maintained the relatively short period of examining cases amounting to, on average, slightly over 4 months, which is one of the best results in comparison with 1st instance administrative courts in other European countries.

Whereas, the inflow of cases in the Supreme Administrative Court remains at the very high level. Last year, almost 23,000 cases were brought to the Supreme Administrative Court, which constitutes approx. 1/3 of the total number of cases that were brought to voivodship administrative courts in 2019. Nearly 11,000 cases (almost half of the total inflow to the Supreme Administrative Court) were brought only to the General Administrative Chamber last year.

Efficiency in handling the ongoing inflow and decreasing arrears from previous years depends directly on the staffing judges' positions in administrative courts. Another year the Supreme Administrative Court and voivodship administrative court adjudicated in the non-full personal panel. In 2019, 5 judges were nominated by the President of

the Republic of Poland to the position of the Supreme Administrative Court's judge. Moreover, 11 voivodship administrative courts' judges and 8 court assessors were nominated. In the same year, 10 Supreme Administrative Court's judges and 17 voivodship administrative courts' judges retired. At the end of the reporting year 2019, 106 judge positions were taken at the Supreme Administrative Court of a limit of 127 positions, and in the case of voivodship administrative courts – 457 judge positions of a limit of 483 positions, as well as 28 court assessors' positions of a limit of 64 positions. Despite the above, the Supreme Administrative Court resolved 22,000 cases last year, being close to getting the current inflow under control. It should be underlined that the Commercial and Financial Chambers managed to not only get the inflow under control, but also to decrease the outstanding cases from previous years, whereas the General Administrative Chamber succeeded in settling a record number of almost 10,000 cases. These positive results were achieved in the highest instance of the Polish administrative courts with the support of voivodship administrative courts' judges delegated to adjudicate at the Supreme Administrative Court.

The substantive jurisdiction of administrative courts was extended in 2019. As of March 2019, the Supreme Administrative Court is authorised to examine complaints against final decisions of consuls in cases of refusal to issue, annulment or withdrawal of Schengen visas, as well as against the consul's inactivity in these cases<sup>3</sup>. Moreover, the control of administrative courts covers decisions issued by the Director of the National Revenue Information in the case of the so-called binding rate information (WIS)<sup>4</sup>, which is a decision issued for the purposes of taxation of delivery of goods, import of goods, intra-Community acquisition of goods and supply of services.

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<sup>3</sup> See the Act of 9 November amending the Act – Law on Proceedings before Administrative Courts (Journal of Laws of 2019, item 11).

<sup>4</sup> Institution introduced by Article 1 point 8 of the Act of 9 August 2019 (Journal of Laws of 2019.1751) amending the Act of 11 March 2004 on Value Added Tax.

Administrative court's active use in 2019 of the European inter-court dialogue instruments by submitting requests for preliminary rulings to the CJEU and activity in the area of international contacts with transnational judicial institutions and administrative courts of the European Union Member States other than Poland (within bilateral partnerships and multilateral contacts) proves that our administrative courts function in the indivisible space of common values and may continue so provided that it is based on mutual trust and recognition of common values, including independence of the judiciary, which is both, a necessary element of the almost 100 years old Polish model of judicial review of the public administration, and an element of our identity as Europeans.

As shall be concluded from reading further parts hereof, in 2019 administrative courts made all efforts to properly protect interests of the society and of an individual in relations with the public authority, by shaping and thus reinforcing trust to the broadly understood state which unifies all of us. Performance of the aforementioned activities is reflected in the annual information on the activity of administrative courts, which, apart from being sent to relevant bodies, is shared with all interested parties on the website of the Supreme Administrative Court. Whereas, preparing this report in English is aimed at presenting the activity of administrative courts both, to judicial institutions in the European Union and citizens of other Member States, as well as other international organisations interested in the activity of Polish administrative courts.

# COURT SYSTEM OF THE REPUBLIC OF POLAND

## ORDINARY COURTS

## ADMINISTRATIVE COURTS

### SUPREME COURT

*(Sąd Najwyższy)*

Court of Cassation  
2<sup>nd</sup> and final instance

### SUPREME ADMINISTRATIVE COURT

*(Naczelny Sąd Administracyjny)*

Court of Cassation  
2<sup>nd</sup> and final instance

### CONSTITUTIONAL TRIBUNAL

*(Trybunał Konstytucyjny)*

A posteriori and a priori abstract control of normative acts, constitutional complaints, adjudication of competence disputes between central constitutional State bodies, deciding on the conformity with the Constitution of the purposes or activities of political parties, recognizing the temporary incapacity of the President to perform his/her office.



# THE STRUCTURE OF THE SUPREME ADMINISTRATIVE COURT



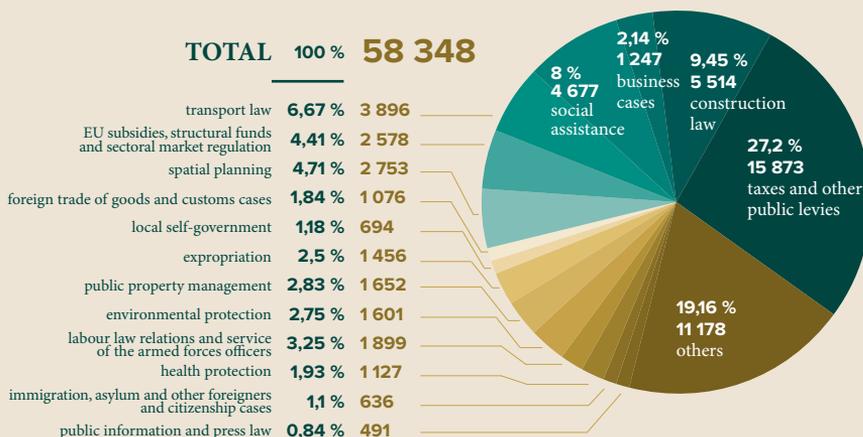
*The authorities of the Supreme Administrative Court are: the President, the General Assembly of Judges and the Board. The Supreme Administrative Court is divided in its judicial function into the Financial Chamber, the Commercial Chamber and the General Administrative Chamber.*

## COMPLAINTS\* SETTLED BY VOIVODSHIP ADMINISTRATIVE COURTS 2004-2019

YEAR	TOTAL NUMBER OF CASES TO RESOLVE <i>(Left from previous period + registered in given year)</i>	NUMBER OF CASES RESOLVED <i>(Total)</i>	CASES REMAINED FOR THE NEXT YEAR
2004	151 471	83 217	68 254
2005	131 163	87 383	43 780
2006	106 216	78 660	27 556
2007	86 184	66 942	19 242
2008	76 686	58 730	17 956
2009	77 058	59 500	17 558
2010	85 388	64 121	21 267
2011	91 118	69 281	21 837
2012	93 997	71 865	22 132
2013	103 766	75 696	28 070
2014	112 231	81 242	30 989
2015	114 520	81 353	33 167
2016	109 859	78 992	30 867
2017	103 293	77 567	25 726
2018	91 689	69 315	22 374
2019	92 601	69 238	23 363

\* All complaints including complaints against the acts, actions or failure of the authorities to act and the excessive length of proceedings.

### NUMBER OF COMPLAINTS AGAINST THE ACTS OR ACTIONS OF PUBLIC ADMINISTRATION SETTLED BY VOIVODSHIP ADMINISTRATIVE COURTS IN 2019 BY SUBJECT



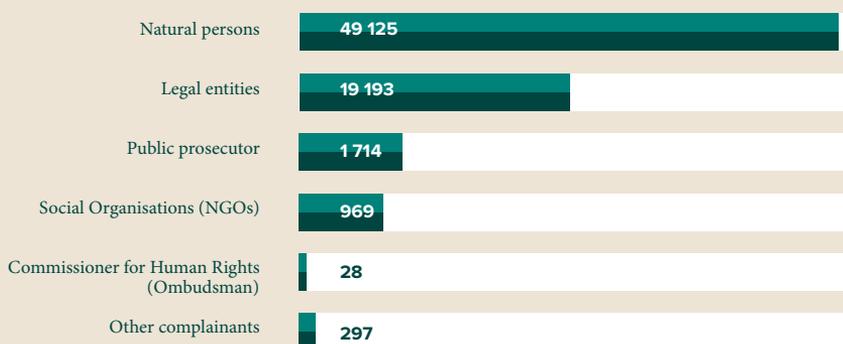
## COMPLAINTS\* LODGED TO VOIVODSHIP ADMINISTRATIVE COURTS IN 2019

VOIVODSHIP ADMINISTRATIVE COURT	COMPLAINTS LODGED	
	TOTAL	
	NUMBER	%
ALL COURTS	70 227	100
BIAŁYSTOK	1 763	2,51
BYDGOSZCZ	2 102	2,99
GDAŃSK	4 161	5,93
GLIWICE	5 492	7,82
GORZÓW WLKP.	1 969	2,80
KIELCE	1 796	2,56
KRAKÓW	5 179	3,54
LUBLIN	2 483	3,54
ŁÓDŹ	3 140	4,47
OLSZTYN	2 060	2,93
OPOLE	1 083	1,54
POZNAŃ	4 686	6,67
RZESZÓW	2 576	3,67
SZCZECIN	2 367	3,37
WARSZAWA	24 429	34,79
WROCLAW	4 941	7,04

\* All complaints including complaints against the acts, actions or failure of the authorities to act and the excessive length of proceedings.

## VOIVODSHIP ADMINISTRATIVE COURTS

NUMBER OF CASES LODGED IN 2019 BY COMPLAINANTS



## INTRODUCTION

*Law on the System of Administrative Courts obliges the President of the Supreme Administrative Court to inform the President of the Republic of Poland and the National Council of the Judiciary on the activities of administrative courts.*

Administrative Courts, in compliance with the provisions of the Constitution and laws, comprise two instances. Voivodship administrative courts examine cases in first instance, whereas, the Supreme Administrative Court is the appeal court executing judicial and organisational supervision over first instance courts. Jurisdiction of administrative courts covers cases stipulated in provisions of Article 184 of the Constitution of the Republic of Poland and laws.

In compliance with the Act – Law on the System of Administrative Courts the President of the Supreme Administrative Court informs the President of the Republic of Poland and the National Council of the Judiciary on the activity of administrative courts. Each year, the General Assembly of Judges of the Supreme Administrative Court passes in a form of a resolution the Information on the activity of administrative courts presented during a special meeting of the Assembly by the President of the Supreme Administrative Court. Passing such a resolution constitutes performance of the aforementioned statutory provision. This English report presents the outline of the activity of Polish administrative courts and is based on the data published in “The information on the activity of administrative courts in 2019”, which includes all aspects concerning functioning and case-law of administrative courts.

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<sup>5</sup> The Act of 25 July 2002 – Law on the System of Administrative Courts (Journal of Laws of 2019, item 2167; hereinafter: Law on the System of Administrative Courts), the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (Journal of Laws of 2019, item 2325 and the Act of 30 August 2002 – Provisions introducing the Act – Law on the System of Administrative Courts and the Act – Law on Proceedings before Administrative Courts (Journal of Laws No. 153, item 1271, as amended). You shall find the text of the Constitution in English on the website of the Polish Parliament: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>6</sup> Article 184 of the Constitution of the Republic of Poland stipulates: “The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statutes of resolutions of organs of local government and normative acts of territorial organs of government administration.”

<sup>7</sup> Article 15 par. 1 of the Law on the System of Administrative Courts.

<sup>8</sup> You can find the information on the activity of administrative courts from previous years on the website of the Supreme Administrative Court: <http://nsa.gov.pl/sprawozdania-rocne.php>

# ACTIVITIES OF VOIVODSHIP ADMINISTRATIVE COURTS

## General statistics 2019

In 2019, voivodship administrative courts received 61,306 complaints against acts or actions<sup>9</sup> and 8,921 complaints against failure of authorities to act and excessive length of proceedings. In total, courts had to examine 70,227 complaints. Compared to 2018, the number of complaints increased by 4,264 cases, or 6.07% of the total figure. 21,063 complaints against acts and actions of authorities and 1,311 complaints against failure of authorities to act and excessive length of proceedings remained for examination from the previous period. In total, courts had to examine 92,601 cases, that is, by 912 complaints more than in 2018.

Voivodship administrative courts resolved 58,348 complaints against acts and actions of authorities, of which 39,316 were settled at a hearing and 19,032 in camera. Among the complaints resolved at a hearing, 13,648 were upheld, 25,024 rejected, 251 dismissed and 393 resolved in

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<sup>9</sup> The number also includes complaints for reopening of proceedings.

*The largest number of complaints was received in 2019 by the Warsaw VAC (24,429 complaints - 34.79% of all complaints filed with 1st instance administrative court.*

other manner. In camera, 2,294 complaints were upheld, 5,888 rejected and 9,299 dismissed. As regards complaints against lack of activity of authorities and excessive length of proceedings, the courts resolved 7,999 complaints, of which 617 at a hearing and 7,382 in camera. In total in 2019, voivodship administrative courts resolved 66,347 complaints, or 94.48% of received complaints and 71.65% of all complaints to be examined. Compared to 2018, these percentages are, respectively lower by 9.41% and by 3.09%. In total 23,363 complaints remained to be examined in the following period, that is, 989 complaints more than in 2018.

The largest number of complaints was received by the Warsaw VAC, that is, 24,429 complaints, or 34.79% of all complaints filed with voivodship administrative courts. For comparison, the Gliwice VAC received 5,492 complaints, the Kraków VAC 5,179 complaints, the Poznań VAC 4,686 complaints, and the Wrocław VAC 4,941 complaints. Similarly as in 2018, the lowest number of complaints was received by the Opole VAC (1,083), Białystok VAC (1,763), Kielce VAC (1,796), and Gorzów Wielkopolski VAC (1,969).

*The average duration of proceedings before voivodship administrative courts bears witness to considerable efficiency of Polish administrative judiciary.*

The highest number of complaints – 49,125 was filed by natural persons. Legal persons filed 19,193 complaints, non-governmental organisations – 969, public prosecutor – 1,714, the Commissioner for Human Rights – 28, other entities – 297. Proceedings before voivodship administrative courts involved 13,902 attorneys of public administration bodies, 7,108 advocates, 9,114 attorneys-at-law, 2,369 tax advisors, 151 patent attorneys, 754 public prosecutors and the Commissioner for Human Rights in 4 cases.

On average, voivodship administrative courts resolved 44.01% complaints against acts and actions of authorities, failure of authorities to act and excessive length of proceedings within 3 months. 61.13% cases were resolved within 4 months and 81.28% of cases within 6 months<sup>10</sup>.

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<sup>10</sup> These percentages do not add up, since each is calculated separately.

These figures bear witness to considerable efficiency of proceedings before voivodship administrative courts.

## Control of public administration activities

In the reporting year, voivodship administrative courts quashed on average 27.32% of decisions and other actions of public administration bodies. For comparison, this percentage was 25.08% in 2018, 22.22% in 2017, 19.78% in 2016, 22.03% in 2015, 22.2% in 2014, 24.36% in 2013.

As in previous years, the majority of decisions of voivodship administrative courts were made in tax matters, which accounted for 27.20% of all resolved cases. Out of 15,873 resolved complaints against acts and other actions of authorities in tax matters, 3,657, or 23.04% were upheld (compared to 20.67% in 2018, 18.8% in 2017, and 21.42% in 2016).

As regards complaints against the lack of activity of authorities and excessive length of proceedings, voivodship administrative courts resolved 7,999 complaints, upholding 258 (3.23%) of them. In 2018, the courts resolved 6,310 such cases, compared to 6,240 in 2017, 6,490 in 2016, 6,443 in 2015 and 6,512 in 2014.

The courts received 3,604 complaints regarding local self-governments, i.e. 5.13% of the total number of received complaints. 2,558 complaints were resolved, of which 1,943, i.e. 75.96% complaints were upheld. In comparison, in 2018, courts received 3,072 complaints i.e. 4.66% of the total number of received complaints, 2,194 complaints were resolved, 1,635 i.e. 74.52% were upheld, in 2017, courts received 2,610 complaints i.e. 3.6% of the total number of received complaints, 1,599 complaints were resolved, 1,016 i.e. 63.54% were upheld.

*In the reporting year, the voivodship administrative courts eliminated 27.32% of decisions and other administrative activities, other administrative activities.*

In total, 3,075 complaints against the legislative activity of the municipal self-government were resolved, of which 1,733 (56.36%) were upheld, poviát self-government – 244 complaints were resolved, of which 158 (64.75%) were upheld, whereas, voivodship self-government – 104 complaints were resolved, of which 52 (50%) were upheld.

In response to judgments of voivodship administrative courts, 18,465 cassation appeals were filed, of which 1,041 complaints were rejected. 17,013<sup>11</sup> (92.14%) of cassation appeals were referred to the SAC. Considering that in 2019 voivodship administrative courts resolved 66,347 complaints, cases referred to the SAC accounted for 25.64% of all resolved cases concerning administrative acts, lack of activity of authorities and excessive length of proceedings. In 2018, voivodship administrative courts referred 20,229 cassation appeals to the SAC, compared to 17,661 in 2017, 20,605 in 2016, 18,641 in 2015, 18,103 in 2014, 17,089 in 2013, 14,983 in 2012 and 14,381 in 2011.

## Mediation and simplified proceedings

### MEDIATION PROCEEDINGS

The aim of the mediation is to allow parties to the dispute to achieve agreement with the assistance of a mediator and without holding a hearing.

Despite amendment<sup>12</sup> of the mediation proceedings, similarly as in the past years, this institution has not been applied in the administrative courts in a broader manner. In 2019, 11 motions for mediation were submitted, mediation proceedings were initiated in the first case and one case was resolved. The reason for this state may be justified with the

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*Achievement of agreement with the assistance of an external mediator without holding a court hearing is the main aim of mediation.*

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<sup>11</sup> Some appeals were received by the SAC and registered in 2020.

<sup>12</sup> Pursuant to the Act of 7 April 2017 amending the Act – the Code of Administrative Proceedings and Certain Other Acts (Journal of Laws, item 935), which entered into force on 1 June 2017.

swiftness and efficiency of resolving cases in the standard mode. Due to the period of resolving the majority of cases, currently amounting to 6–12 months, possible mediation proceedings would not contribute to accelerating the proceedings, which, in principle, constitutes one of the key advantages of mediation.

### **SIMPLIFIED PROCEEDINGS**

Simplified proceedings are a special kind of administrative court proceedings. In compliance with Article 119 of the Act – Law on Proceedings Before Administrative Courts, a case may be examined in simplified proceedings, when the administrative decision or order appealed to the administrative court has been affected by invalidity or have been issued in violation of the law which provides a basis for reopening of the proceedings and when a party has requested that the case be referred for a hearing in accordance with the simplified procedure, and none of the other parties has demanded, within 14 days from the notification of filing the request, that a trial be conducted.

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*Within simplified proceedings, the case is examined in camera by three judges, not bounded by any limitation in referring the case to be examined at a hearing.*

The catalogue of cases which may be examined in this mode has been extended pursuant to the Act of 9 April 2015 amending the Act – Law on Proceedings before Administrative Courts<sup>13</sup> binding as of 15 August 2015. A case may be recognized in simplified proceedings, if the subject of the complaint is an order made in administrative proceedings, which is subject to an interlocutory appeal or concludes the proceedings, as well as an order ruling on the merits of the case and orders made in enforcement proceedings and proceedings to secure claims which are subject to an interlocutory appeal; or the subject of a complaint is the failure to act or excessive length of proceedings. As of 2017, the simplified proceedings may also be applied to examine a case in which the appealed administrative decision has been issued in simplified proceedings before administrative bodies. Moreover, a case may also be exam-

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<sup>13</sup> Journal of Laws of 2015, item 658.

ined in simplified proceedings, if the authority did not pass the complaint to the court despite the imposition of a fine.

The court examining the case in this mode is not bound by any limitation in referring the case to be examined at a hearing. The court may do so either at the request of a party or ex officio, if it considers that it is necessary to examine the case in full proceedings. In simplified proceedings, the case is examined in camera by three judges.

As of 2017, a significant increase in the number of cases examined in this mode has been noted. In 2019, voivodship administrative courts resolved 11,100 cases in simplified proceedings, of which 4,306 were upheld. Last year, the majority of cases were examined in simplified proceedings in the Voivodship Administrative Court in Warsaw, i.e. 5,740 cases, in the Voivodship Administrative Court in Wrocław – 1,412 cases and in the Voivodship Administrative Court in Kraków – 1,217 cases.

# ACTIVITIES OF THE SUPREME ADMINISTRATIVE COURT

**The Supreme Administrative Court examines<sup>14</sup> the means of challenge against decisions of voivodship administrative courts** i.e. cassation appeals and interlocutory appeals against judgments and orders; **adopts resolutions** aimed at clarifying legal provisions whose application has caused discrepancies in the jurisprudence of administrative courts; adopts resolutions providing conclusions in legal issues that raise serious doubts in a specific administrative court case; **settles jurisdictional disputes between authorities of local self-government units** and local self-government appeal boards, as well as competence disputes between their authorities and government administration authorities; and examines other matters within the jurisdiction of the Supreme Administrative Court under separate laws, including the Act of 17 June 2004 on Complaint Against a Breach of the Right of a Party to Have its Case Examined in Court Proceedings Without Undue Delay<sup>15</sup>. **Moreover, the Supreme Administrative Court is also a disciplinary court in disciplinary cases regarding judges of administrative courts.**

<sup>14</sup> See Article 15 par. 1 of the Law on Proceedings before Administrative Courts.

<sup>15</sup> Journal of Laws No. 179, item 1843, as amended.

The Supreme Administrative Court consists of the Financial Chamber, the Commercial Chamber and the General Administrative Chamber. Each of the Chambers exercises, within the limits and in the manner specified by the relevant regulations, supervision over the case law of voivodship administrative courts in cases falling within the jurisdiction of that Chamber.

## General statistics 2019

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*In 2019 the SAC received 16 844 cassation appeals, 3 385 less than in previous year.*

In 2019, the Supreme Administrative Court received 16,844 cassation appeals<sup>16</sup> and 80 petitions for reopening of proceedings. 27,649 cassation appeals and 28 petitions for reopening of proceedings remained from the previous period. In total, the SAC had to examine 44,493 cassation appeals.

In 2019, a total of 16,375 cassation appeals were examined, of which 12,435 (75.94% of total resolved cases) at a hearing and 3,940 (24.06%) in camera. The SAC upheld 3,465 (21.16%) cassation appeals, dismissed 11,721 (71.58%) appeals and resolved 1,189 (7.26%) in other manner.

In 2019, the number of cassation appeals filed decreased by 3,385 compared to the previous year.

The largest number of cassation appeals (12,048) was filed by a party other than an administrative body. Administrative bodies filed 4,587 complaints, whereas, cassation appeals filed by an administrative body and a party to the proceedings other than a body amounted to 209. Proceedings before the SAC involved 6,038 attorneys of public administration bodies, 2,313 advocates, 2,834 attorneys-at-law, 865 tax advisors, 49 patent attorneys, 64 public prosecutors and the Commissioner for Human Rights in 22 cases

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<sup>16</sup> Some cassation appeals, pursuant to separate provisions, are directly received by the Supreme Administrative Court.

As in previous years, the largest number of cassation appeals concerned taxes and other pecuniary obligations falling under the Tax Ordinance Act, and the enforcement of such obligations (6,023 complaints filed). In these matters 6,199 cassation appeals were resolved, accounting for 36.78% of all resolved appeals.

Apart from cassation appeals, in 2019, the SAC resolved 4,665 interlocutory appeals against decisions (orders) of first instance courts, upholding 715 of them (15.36% of all interlocutory appeals), dismissing 3,773 (80.88%), and resolving 177 (3.79%) in other manner.

The SAC also examined 162 complaints against the breach of the right of a party to have its case examined in court proceedings without undue delay: 4 complaints (2.47% of all resolved complaints of this kind) were upheld, 60 (37.04%) rejected and 98 (60.49%) resolved in other manner.

In 2019, the SAC resolved 42.33% of all cases within 12 months and 80.43% of all cases within 24 months. As regards cassation appeals, 23.54% of cases were resolved within 12 months. For interlocutory appeals, 91.13% of them were resolved within 2 months and 99.72% within 12 months<sup>17</sup>.

## Activities of Chambers of the Supreme Administrative Court

### THE FINANCIAL CHAMBER

In 2019, the Financial Chamber received 5,650 cassation appeals and 16 petitions for the reopening of proceedings, of which 42% (2,373) pertained to value added tax cases, 17% (966) to real estate tax cases, 14% (795) to personal income tax cases and 8% (443) to corporate income tax cases.

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*In 2019, the Financial Chamber received 5 650 cassation appeals and 16 petitions for the reopening of proceedings.*

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<sup>17</sup> These percentages do not add up and each is calculated individually.

Among all cassation appeals entered on record in this statistical period, individual interpretations issued by the Director of the National Revenue Administration accounted for over 24.3% (1,373) of cases; in addition, 50 cassation appeals against individual interpretations issued by other authorities were received. The number of complaints concerning tax interpretations remains high.

The Chamber examined 5,678 cassation appeals, of which 4,597 at a hearing and 1,069 in camera. The Chamber also noted 16 complaints against excessive length of proceedings conducted by public administration bodies.

In 2019, 1,243 interlocutory appeals against decisions of administrative courts were received. Out of 1,243 resolved cases 27% (332) concerned rejection of a complaint, 19% (233) the stay of an act or activity appealed against, 14% (171) the failure to comply with a deadline, 1.5% (19) the right to assistance, 1.5% (19) the disqualification of a judge, and 37% (460) other areas. 146 interlocutory appeals remained unresolved. Furthermore, 3 competence disputes were resolved. In 2 cases the motion was dismissed.

21 complaints against the breach of the right of a party to have its case examined in court without undue delay were filed, of which 1 pertained to proceedings before the SAC. In none of the resolved cases did the Chamber uphold a complaint against excessive length of proceedings. 7 complaints remained for examination in the next year. The Chamber received 19 complaints for statement on non-compliance of the SAC's final decision with the law. The ruling panels dismissed 14 complaints and rejected 3.

The Chamber received 7 motions for clarification of legal regulations. 3 resolutions were adopted and 3 cases were referred for examination by a panel of seven judges and ended with issuing judgments. 3 requests for preliminary rulings were referred to the Court of Justice of the European Union.

The cassation appeals resolved at a hearing and in camera (5,666) were filed by various authorised entities. Legal persons submitted 1,795 appeals, natural persons 2,208 and authorities 1,716<sup>18</sup>.

Attorneys of public administration bodies participated in 2,906 cases, which amounts to 63.16% of cases resolved in the Chamber in this mode (4,601). Advocates appeared as attorneys of complainants and participants to the proceedings in 638 cases (13.87%). Attorneys-at-law appeared as attorneys of complainants and participants to the proceedings other than administration bodies in 802 cases (17.43%). Tax advisors not being advocates or attorneys-at-law participated in 800 cases (17.39%). Public prosecutor participated in 12 cases (0.26%) and the Commissioner for Human Rights in 1 case.

## THE COMMERCIAL CHAMBER

In 2019, the Chamber received a total of 3,757 cassation appeals, i.e. 4.4% less than in 2018 and 33 motions for the reopening of proceedings (in 2018 – 10, in 2017 – 19). The number of cases initiated by cassation appeals and motions for the reopening of proceedings awaiting examination amounted to 11,550. The average number of cases initiated by cassation appeals to adjudicate by one judge amounted to 427.48.

*In 2019, the Commercial Chamber received 3 757 cassation appeals and 33 petitions for the reopening of proceedings.*

Cassation appeals were most often lodged in matters related to the European Union foreign trade in goods, customs duties and protection against excessive imports of goods into the customs territory of the European Union (677); European Union subsidies, structural funds and regulation of sectoral markets (676); public funds, including budgets of local authority units, reliefs in repayment of pecuniary obligations not subject to the provisions of the Tax Ordinance Act, and enforcement of such obligations (472); maintenance and protection of roads, road traffic including road transport (416); business activities (376); excise tax (373); health

<sup>18</sup> These numbers do not add up.

insurance (332); prices, fees and tariff rates (144); industrial property right (90); authorisations to practice specific activities and professions (67).

The largest number of cassation appeals falling under the Chamber's substantive jurisdiction followed from decisions of the Warsaw VAC – 42.19% of all received complaints, the Poznań VAC – 7.88% of all received complaints and the Gliwice VAC – 6.84% of all received complaints.

The vast majority of cassation appeals (82.38%) were lodged by a party other than an administration authority. Cassation appeals against the judgment of the first instance court filed solely by administration authorities accounted for 17.09%, while in slightly over 0.53% of cases the cassation appeal was filed against the same decision by both an administration authority and another party to the proceedings.

Administration authorities lodged a total of 642 cassation appeals, compared to 1,301 cassation appeals lodged by natural persons, 1,787 by legal persons, 31 by non-governmental organisations, 9 by a public prosecutor. Additionally, 16 cassation appeals were lodged jointly by non-governmental organisations and legal persons, and 4 - by non-governmental organisations and natural persons.

The Chamber resolved 4,221 cassation appeals and 25 motions for the reopening of proceedings before the SAC. The number of resolved cases was greater than the number of cases received by the Chamber, hence, the number of cases remaining to be examined in the next reporting period decreased by 464. 81.03% of resolved cases were examined at a hearing, and 18.97% in camera. In 2018, the ratio was 73.14% to 26.86%.

Hearings were attended by 2,021 attorneys of public administration bodies and attorneys of the parties: 638 attorneys-at-law, 574 advocates, 65 tax advisors and 49 patent attorneys. In 4 cases, the hearings were conducted with the participation of a public prosecutor.

In cases initiated by cassation appeals 20.70% of decisions subjected to instance control were quashed (in 2018 – 14.51% and in 2017 – 16.66%).

In 2019, the Chamber received 818 interlocutory appeals against decisions of first instance courts. 82 interlocutory appeals remained to be examined from the previous reporting period. In total, 823 interlocutory appeals were examined and 77 interlocutory appeals remained to be resolved in the next period, which corresponds with the average number of resolving this type of cases by the Chamber within a month.

The examined interlocutory appeals concerned mostly the rejection of a complaint (25.39%), the stay of an act or activity appealed against (18.47%), the failure to comply with a deadline (13.24%), the disqualification of a judge (1.22%) and the right to assistance (0.97%).

Among the interlocutory appeals against the rejection of a complaint, 18.66% were legitimate, 17.11% concerned the stay of an act or activity appealed against and 15.60% concerned failure to comply with a deadline.

The Chamber examined 43 competence disputes. In 26 cases the Court named the authority competent to resolve the case. Additionally, 33 complaints against the breach of the right of a party to have its case examined in court proceedings without undue delay were resolved, but none of them was found worthy of upholding. The Chamber received 5 complaints for statement on non-compliance of the final decision with the law. These complaints were rejected.

By an order of 26 June 2019, Case No. II GOK 2/18 the adjudicating panel of the Chamber submitted a request for preliminary ruling to the Court of Justice of the European Union.

## THE GENERAL ADMINISTRATIVE CHAMBER

*In 2019,  
the General  
Administrative  
Chamber  
received 7 437  
cassation appeals  
and 17 petitions  
for the reopening  
of proceedings.*

The Chamber received 7,437 cassation appeals (8,277 in 2018) and 17 petitions for the reopening of proceedings (31 in 2018). Out of all cassation appeals, the most appeals were lodged in the following areas: construction 1,429 – 19.21% (1,531 in 2018), spatial management 784 – 10.54% (689 in 2018), labour and service relations of uniformed officers 670 – 9.01% (1,464 in 2018), expropriations 569 – 7.65% (711 in 2018), social assistance 429 – 5.77% (446 in 2018), nature and environmental protection 414 – 5.57% (424 in 2018), water management 393 – 5.28% (196 in 2018), public information and press law 338 – 4.54% (338 in 2018), property management 326 – 4.38% (367 in 2018).

Compared to 2018, the number of received cassation appeals decreased by 840, and the number of examined cases increased by 17 (compared to 6,491 cassation appeals resolved in 2018). The number of cassation appeals remaining to be resolved in the next period increased by 929 as compared to 2018.

The largest number of cassation appeals was received by VACs in: Warsaw – 3,410, Kraków – 507, Poznań – 501, Gliwice – 356, Wrocław – 353, Łódź – 350, Gdańsk – 327, Szczecin – 208, Rzeszów – 283, Lublin – 229, and the smallest number in: Białystok – 181, Opole – 181, Bydgoszcz – 175, Olsztyn – 142, Kielce – 137 and Gorzów Wielkopolski – 97.

4,835 cassation appeals were dismissed (5,063 in 2018), which constitutes 74.43% of the total number of resolved cases (78.08% in 2018).

Cassation appeals were filed mostly by natural persons – 3,718 (50% of all appeal cases) and legal persons – 3,538 (47.6%). Non-governmental organisations filed 128 cassation appeals (1.7%), public prosecutors – 47 (0.6%) and the Commissioner for Human Rights – 6 (0.1%).

The most cassation appeals were filed by a party to proceedings other than administrative body – 5,348 (71.91% of all filed appeals), 1,959 cassation appeals were filed by an administrative body (26.34%), whereas, 130 cassation appeals against the same decision were filed by both, an administrative body and a party to proceedings other than an administrative body (1.75%).

Proceedings in resolved cases involved 1,111 attorneys of public administration bodies (933 in 2018), as complainants and parties to the proceedings – 1,101 advocates (1,083 in 2018) and 1,394 attorneys-at-law (1,257 in 2018). Public prosecutors appeared in 48 cases (74 in 2018), and the Commissioner for Human Rights in 22 cases (20 in 2018).

The Chamber received 2,651 interlocutory appeals (2,696 in 2018). In total, 2,608 interlocutory appeals were examined (2,741 in 2018). Compared to 2018, the number of examined interlocutory appeals decreased by 133. 238 interlocutory appeals remained for examination in the next period (195 in 2018).

The largest number of interlocutory appeals was received from VACs in: Warsaw – 1,170, Kraków – 298, Łódź – 230, Poznań – 164, Gdańsk – 147, Gliwice – 116, Wrocław – 115, and the smallest number from VACs in: Rzeszów – 89, Lublin – 66, Olsztyn – 51, Białystok – 46, Szczecin – 43, Bydgoszcz – 36, Kielce – 30, Gorzów Wielkopolski – 29 and Opole – 21.

Out of 2,651 received interlocutory appeals regarding the subject of complaint, 1,201 (45.3%) concerned other decisions, 449 (16.9%) – decisions to stay the execution of the act appealed against, 481 (18.1%) – decisions to reject a complaint, 285 (10.8%) – decisions concerning reinstatement of deadlines to perform court acts, 188 (7.1%) – decisions concerning the disqualification of a judge, 47 (1.8%) – decisions concerning the right to assistance.

462 motions to resolve a competence or jurisdiction dispute (501 in 2018) were examined. In 325 cases the body competent to examine the case was indicated, 47 motions were dismissed, 39 motions were rejected, 31 motions were resolved in other manner and 2 cases were closed. 149 motions remained to be examined. In 15 cases another court was designated to examine the motion for the disqualification of a judge, and in 5 – another court was designated to examine the case.

Among the examined complaints for excessive length of proceedings, 4 were upheld (1 in 2018), 49 complaints were dismissed (55 in 2018), 58 complaints were rejected, including 1 petition for the reopening of proceedings (151 in 2018), and 24 complaints remained to be examined in the next period. Excessive length of proceedings was stated in 4 cases. The total amount of granted pecuniary amounts was PLN 12,000 (in 2 cases parties were granted the amount of PLN 2,000 each, and in 1 case – PLN 3,000 each).

The Chamber received 9 complaints for statement on non-compliance of the final decision with the law (13 in 2018). 11 complaints were resolved, including 2 dismissed, 9 rejected and 1 remained for examination in the next period.

The Chamber received 2 motions to adopt a resolution in abstract mode – 1 of the Public Prosecutor General and 1 of the President of the SAC, and 5 legal questions posed by the ruling panels. 4 cases were resolved – 1 motion of the President of SAC and 1 legal question posed by the ruling panel, as well as 2 motions from the previous period – 1 of the President of the General Counsel to the Republic of Poland and 1 of the Commissioner for Human Rights. 3 resolutions were adopted in the panel of 7 SAC judges, and in 1 case the full panel of SAC judges refused to adopt a resolution (in 2018, 6 cases were resolved: 4 resolutions were adopted, and in 1 case adopting a resolution was refused, in 1 case the proceedings were discontinued due to the withdrawal of a motion).

5 motions remained to be examined: 1 of the Public Prosecutor General and 4 legal questions posed by ruling panels.

In the Case No. II OSK 2470/19, the SAC's ruling panel submitted request for preliminary ruling to the Court of Justice of the European Union.

## Resolutions of the Supreme Administrative Court

The Supreme Administrative Court adopts resolutions aimed at clarifying the legal provisions, whose application caused discrepancies in the jurisprudence of administrative courts, on the request of: the President of the SAC, the Public Prosecutor General, the Commissioner for Human Rights<sup>20</sup>, the Commissioner for Small and Medium Entrepreneurs<sup>19</sup>, the Commissioner for Children's Rights (the so-called 'abstract' resolutions) and resolutions containing conclusions in legal issues that raise serious doubts in a particular administrative court case<sup>21</sup> (the so-called 'concrete' resolutions). Substantive response to the legal question posed to the extended panel pursuant to Article 15 par. 1 point 3 of the Law on Proceedings before Administrative Courts is each time preceded with an analysis regarding the issue, whether the motion fulfils the criteria allowing initiation of a resolution procedure. Jurisprudence of administrative courts regarding understanding of the concepts of "discrepancy" and "serious doubts" is uniform.

Discrepancy in application of legal provisions pursuant to Article 15 par. 1 point 2 of the Law on Proceedings before Administrative Courts

*Resolutions of the SAC enlarged panels are an important instrument to eliminate emerging discrepancies in the case-law of administrative courts and to guarantee the individuals predictable jurisprudence in similar cases and the observance of the principle of equality.*

<sup>19</sup> As of 30 April 2018, pursuant to the Act of 6 March 2018 – Provisions introducing the Act – Law of Entrepreneurs and Other Acts Concerning Business Activity (Journal of Laws of 2018, item 650).

<sup>20</sup> So-called "abstract" resolutions adopted pursuant to Article 15 par. 1 point 2 in conjunction with Article 264 par. 2 of the Law on Proceedings before Administrative Courts.

<sup>21</sup> So-called "concrete" resolutions adopted pursuant to Article 15 par. 1 point 3 in conjunction with Article 187 par. 1 and Article 264 of the Law on Proceedings before Administrative Courts.

occurs only when there exists identity of the legal provision and the factual status, with regard to which this provision has been applied by administrative courts and as a result of which these courts issue various decisions on the same legal grounds and in the same factual status or the same decisions based on various interpretations of the same legal provisions are issued. The basic aim of authorising the SAC to adopt resolutions pursuant to Article 15 par. 1 point 2 of the Law on Proceedings before Administrative Courts is to adopt in the administrative courts' decisions a uniform interpretation of legal provisions constituting the subject of clarification by a resolution. Such a resolution is a normatively stipulated, relatively binding all administrative courts, legal form of legal provisions' interpretation regarding application thereof to factual statuses covered with the hypothesis thereof. Relative binding force of SAC's resolutions results from Article 269 par. 1 of the Law on Proceedings before Administrative Courts.<sup>22</sup>

With regard to so-called "concrete" resolutions both, in the doctrine and judicial decisions, it is assumed that Article 187 par. 1 of the Law on Proceedings before Administrative Courts refers to the legal issue of particular importance. Admissibility of issuing such a resolution depends on the joint existence of two premises: whether there is a serious legal doubt in the case and whether resolution of such a doubt is necessary for examination of a cassation appeal.

Serious legal doubts occur when the case involves legal issues, explanation of which presents significant difficulties mainly due to the possibility of different understanding of legal provisions. The grounds for assuming that there is such a premise shall also comprise discrepancies regarding given legal issue in the judicial decisions of administrative courts, however, in the case of "concrete" resolutions this discrepancy is not a necessary element of an effective motion for

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<sup>22</sup> See e.g.: order of 1 April 2019, Case No. I OPS 4/17 and case law referred therein.

adopting a resolution. With regard to the second premise, it should be taken into account that the regulation included in Article 15 par. 1 point 3 and Article 187 par. 1 of the Law on Proceedings before Administrative Courts, examined jointly, indicates that there must be a direct substantive and logical relation between the presented issue and a specific administrative court case and resolution thereof must be necessary for the assessment of the legibility of the filed cassation appeal. Furthermore, this issue should be related to the scope of the complaint, as well as of charges specified in the cassation appeal. Due to the regulation included in Article 183 par. 1 of the Law on Proceedings before Administrative Courts, the presented legal issue has to fall within the boundaries of a cassation appeal and resolution therefor should have a character of a specific precedent<sup>23</sup>.

In 2019, 14 motions to adopt resolutions were received. The SAC adopted a total of 6 resolutions, including 3 in abstract mode (2 on the motion of the President of the SAC and 1 on the motion of the Commissioner for Human Rights). The SAC adopted 3 resolutions pursuant to Article 187 par. 1 of the Law on Proceedings before Administrative Courts. With regard to the motion of the President of the General Counsel to the Republic of Poland the SAC refused to adopt a resolution (order of 1 April 2019, Case No. I OPS 4/17<sup>24</sup>), and the legal issue of the ruling panel (order of 2 July 2019, Case No. I FSK 164/17) was accepted by the SAC for examination by the panel of seven judges pursuant to Article 187 par. 3 of the Law on Proceedings before Administrative Courts, stating that the character of legal doubts occurring in the case is strictly related to the circumstances of the case, which requires examination in the context of these specific circumstances (judgment of 28 October 2019, Case No. I FSK 164/17).

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<sup>23</sup> See e.g.: resolution of 3 June 2019, Case No. II FPS 1/19 and case law referred therein.

<sup>24</sup> Dissenting opinion was added to the order.

## SUBJECT OF RESOLUTIONS PASSED IN 2019

### General-administrative issues

The issue of transcription of a foreign birth certificate of a child, where the same sex persons are stated as parents, was referred to by the SAC in its resolution of 2 December 2019, Case No. II OPS 1/19, adjudicating that provision of Article 104 par. 5 and Article 107 point 3 of the Act of 28 November 2014 – Law on Certificates of Civil Status<sup>25</sup> in conjunction with Article 7 of the Act of 4 February 2011 – Private International Law<sup>26</sup> does not allow transcription of a foreign birth certificate of a child, where the same sex persons are stated as parents. The subject of the case constituting grounds for the ruling panel submitting the motion for resolving the legal issue pursuant to Article 187 par. 1 of the Law on Proceedings before Administrative Courts, was the body's refusal to enter into the Polish register of civil status the British birth certificate of a child, where two women are named as parents. Earlier the claimant initiated proceedings for issuing a passport for the minor which had been left without consideration due to the impossibility of presenting a copy of the Polish birth certificate. In the justification, the SAC stated that the proper interpretation of Article 104 par. 5 of the Law on Certificates of Civil Status cannot lead to depending obtaining by the Polish citizen an identity document or the PESEL (Personal Identification Number) on performing by the body a transcription, which is not possible solely due to the fact that the foreign birth certificate of the child includes data of a woman, who remains in a partnership with the mother of the child being the Polish citizen, which is unknown in the Polish law, instead of data of a man.

The problem concerning transformation of the hitherto service relationship into employment relationship was the subject of the resolution

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<sup>25</sup> Journal of Laws of 2014, item 1741, as amended; hereinafter: the Law on Certificates of Civil Status.

<sup>26</sup> Journal of Laws of 2015, item 1792.

of 1 July 2019, Case No. I OPS 1/19, under which it was decided that accepting by the Customs and Fiscal Service officer proposition of employment and transformation as of the day specified therein, pursuant to Article 171 par. 1 point 2 of the Act of 16 November 2016 – provisions introducing the Act on the National Revenue Administration<sup>27</sup>, the hitherto service relationship in the preparatory or permanent service into the employment relationship on the grounds of the employment agreement for a specified or unspecified period of time, respectively, is not related to the obligation of the competent body to issue a decision adjudicating termination of the service relationship. The Supreme Administrative Court underlined that the solution adopted by the legislator consisting in transforming the hitherto service relationship in the preparatory or permanent service into the employment relationship does not deprive the hitherto Customs and Fiscal Service officer of the right to enforce their freedoms or rights in court (Article 77 par. 2 of the Constitution): before administrative court in case of a refusal to accept the proposition of employment at a time period stipulated by the law (Article 170 par. 3 of the provisions introducing the Act on the NRA) or before an ordinary court, if, as a result of accepting the received proposition of employment, the hitherto service relationship in the preparatory or permanent service is transformed into the employment relationship.

In the resolution of 1 July 2019, Case No. I OPS 3/18 the Supreme Administrative Court adjudicated that: *“1. The basis for issuing a decision on confiscating a driving licence pursuant to Article 102 par. 1 point 4 of the Act of 5 January 2011 on Drivers<sup>28</sup> in conjunction with Article 7 par. 1 points 1 and 2 of the Act of 20 March 2015 amending the Act – the Criminal Code and Certain<sup>29</sup> Other Acts can constitute solely the information on disclosing the act consisting in driving a vehicle with exceeding*

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<sup>27</sup> Journal of Laws, item 1948, as amended; hereinafter: provisions introducing the Act on the NRA.

<sup>28</sup> Journal of Laws of 2019, item 341, as amended.

<sup>29</sup> Journal of Laws of 2015, item 541, as amended.

*the admissible speed by more than 50 km/h in a built-up area; 2. Final judgment regarding the offence liability of the driver due for exceeding the admissible speed by more than 50 km/h in a built-up area does not constitute a preliminary issue pursuant to Article 97 par. 1 point 4 of the Act of 14 June 1960 – the Code of Administrative Proceedings<sup>30</sup> in the proceedings regarding the confiscation of a driving licence pursuant to Article 102 par. 1 point 4 of the Act of 5 January 2011 on Drivers<sup>31</sup>.”*

### **Tax law issues**

In the resolution of 9 December 2019, Case No. II FPS 3/19 the Supreme Administrative Court adjudicated that transmission entrepreneur that concluded with *Państwowe Gospodarstwo Leśne Lasy Państwowe* (State Forests National Forest Holding) an agreement on establishing transmission easement in the territory of the State Treasury land managed by *Państwowe Gospodarstwo Leśne Lasy Państwowe*, is not a taxpayer of the real estate tax on these lands pursuant to Article 3 par. 1 point 4 letter a) of the Act of 12 January 1991 on Local Taxes and Fees<sup>32</sup>, in the wording binding until 31 December 2018. The Supreme Administrative Court stated that determining remuneration for the transmission easement to the benefit of the energy company dealing with transmission or distribution of electricity is stipulated at the amount corresponding with the value of taxes and fees incurred by *Lasy Państwowe* on the part of real estate the use of which is limited due to the encumbrance with the said easement, and it proves the legislator’s acceptance of the state of affairs in which *Lasy Państwowe* remains the taxpayer of the real estate tax in the conditions of establishing transmission easement.

In the resolution of 3 April 2019, Case No. II FPS 1/19<sup>33</sup>, the Supreme Administrative Court stated that in the legal status binding until 31

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<sup>30</sup> Journal of Laws of 2018, item 2096, as amended.

<sup>31</sup> Journal of Laws of 2019, item 341, as amended.

<sup>32</sup> Journal of Laws of 2017, item 1785, as amended.

<sup>33</sup> Dissenting opinion was added to the resolution.

December 2015, announcement of the taxpayer's bankruptcy after the lapse of the deadline to pay the corporate income tax and before the end of the calendar year, in which the deadline to pay this tax lapsed, did not result in interrupting the period of limitation pursuant to Article 70 par. 3 of the Act of 29 August 1997 – the Tax Ordinance<sup>34</sup>. The Supreme Administrative Court indicated that the normative construction of limitation, irrespectively of which legal branch it concerns, requires stipulating by the legislator both, the moment in which the period of limitation lapses and the moment in which it starts running. Legal certainty and legal safety, emanation of which “in itself” is the institution of limitation, require explicit stipulation of circumstances crucial for the limitation in the legal provisions, which means that with the application of the provisions on limitation – especially in the tax law – one should primarily base on the wording of the act. Since these values are respected only when the resolutions regarding the issue of limitation base on the text of provisions stipulating this institution, possible negligence of the legislator or illogicality or irrationality of solutions expressed by the legislator in the text of the act do not constitute a justification for omitting the meaning resulting from the linguistic interpretation – especially in the case they would lead to exceeding the limitation period of tax obligations.

In the resolution of 18 March 2019, I FPS 3/18, the Supreme Administrative Court stated that “1. For the effectiveness of performance of the obligation resulting from Article 70c of the Act of 29 August 1997 - the Tax Ordinance<sup>35</sup> notification referred to in this provision should be delivered to the attorney appointed in the control or tax proceedings, even if this notification is done by the tax authority before which no proceedings are pending with the participation of the attorney of the party. 2. A defect in the performance of the above obligation should

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<sup>34</sup> Journal of Laws of 2005, No. 8, item 60, as amended.

<sup>35</sup> Journal of Laws of 2015, item 613, as amended.

be treated as a lack of realisation of the substantive-legal effect provided for in Article 70 par. 6 point 1 of the Tax Ordinance.” The Supreme Administrative Court stated that despite the fact that service is a substantive-technical activity regulated by procedural provisions, it has far-reaching substantive-legal effects in the form of suspension of the running of the period of limitation of the taxpayer’s tax obligation for the specified settlement period. The procedural attorney appointed by the party has to professionally take care of the taxpayer’s interests in the course of the proceedings and thus, all letters of the tax authority should be addressed at the attorney, since the party may not have the knowledge in the scope of legal effects of the received information, that as of the specific day, as a result of the premise pursuant to Article 70 par. 6 point 1 of the Tax Ordinance, the running of the period of limitation of the taxpayer’s tax obligation for the specified settlement period has been suspended.

## Jurisdictional disputes and competence disputes

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*514 applications to resolve competence and jurisdictional disputes were lodged. 487 cases were settled, and in 352 cases the proper authority for their settlement was indicated.*

In 2019, the SAC received 514 motions for resolving disputes concerning court jurisdiction and competence disputes. 487 of these motions were resolved, and in 351 cases the authority competent to examine the case was indicated.

According to Article 166 par. 3 of the Constitution and Article 4 in conjunction with Article 15 par. 1 point 4 of the Law on Proceedings before Administrative Courts, the Supreme Administrative Court is authorised to settle competence disputes between local self-government authorities and local government boards of appeal, as well as competence disputes between bodies of such authorities and government administration authorities. Disputes provided for in Article 4 of the Law

on Proceedings before Administrative Courts constitute an objectively existing legal situation, in which there is a discrepancy of opinions between authorities being parties to the disputes with regard to their scope of activity, including, primarily the authorisation to examine and settle the same administrative case<sup>36</sup>.

In both cases, the competence dispute (and the jurisdictional dispute) may arise only within the framework of a specific administrative case that is the subject of the conducted proceedings or has not become the subject thereof, since the authority refused to initiate further proceedings. Jurisdictional dispute cannot arise at all, if one of the bodies being parties to the dispute has already resolved the case by issuing an administrative decision resolving the case in essence<sup>37</sup>. The factual status not explicitly specified constitutes a dispute regarding facts and not a dispute regarding the law. Whereas, competences of the Supreme Administrative Court do not include establishing factual findings in cases for resolving the jurisdictional dispute between local government authorities<sup>38</sup>.

## SUBJECT OF MOTIONS IN 2019

With regard to the jurisdictional disputes a significant group of cases concerned issues related to the determination of a place of residence e.g.: granting a homeless person a temporary benefit and a purpose-specific benefit (order of 12 December 2019, Case No. I OW 180/19); confirmation of the right to healthcare benefits<sup>39</sup> funded from the public budget<sup>40</sup> in case of a lack of the beneficiary's place of residence (order of 4 December 2019, Case No. II GW 26/19); referral to the social

<sup>36</sup> See order of 29 October 2019, Case No. II GW 21/19.

<sup>37</sup> See e.g. order of 10 December 2019, Case No. I OW 188/19 and case law referred therein; orders of: 27 April 2007, Case No. II OW 10/07; 12 January 2012, Case No. II GW 7/11; 14 June 2012, Case No. I OW 66/12; 16 June 2019, Case No. I OW 170/19.

<sup>38</sup> Order of 11 December 2019, Case No. II FW 2/19.

<sup>39</sup> Article 101 par. 2 of the Act of 12 March 2004 on Social Assistance (Journal of Laws of 2019, item 1507).

<sup>40</sup> Article 54 par. 1 of the Act of 27 August 2004 on Healthcare Benefits Funded from the Public Budget (Journal of Laws of 2018, item 1510).

welfare home (order of 17 September 2019, Case No. I OW 30/19 and 32/19). Due to the lack of the definition of the concept of “the place of residence” in acts regulating the aforementioned matters, while resolving disputes, in compliance with the established jurisprudence, the Supreme Administrative Court indicated Article 25 of the Civil Code, in compliance with which a place of residence of a natural person is the location in which this person stays with the intention of permanent stay and thus, the body competent to incur expenses in the municipality of the place of residence of the person applying for the benefit. With regard to the indication of the body competent to incur expenses on the care and education of a minor<sup>41</sup>, administrative courts refer to the norm under Article 26 par. 1 of the Civil Code determining the place of residence of a child remaining under parental authority (order of 29 October 2019, Case No. I OW 51/19). If the place of the last permanent residence of the child cannot be determined, the poviát with jurisdiction for the seat of the court, which adjudicated on placing the child in a foster family is competent to incur expenses<sup>42</sup> (order of 18 October 2019, Case No. I OW 88/19).

With regard to the issuance of the permit for occupation of the road lane, established judicature opinions that an authority competent for issuance of a decision is the road manager were shared. The factor prejudging who the road manager is, constitutes the category to which the road has been assigned (order of 29 October 2019, Case No. II GW 21/19 and judicial decisions referred therein).

Similarly as in 2018, interpretation doubts concerned introduction as of 1 January 2018 of the new structure of water administration authorities issued pursuant to the Act of 20 July 2017 – the Water Law<sup>43</sup>.

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<sup>41</sup> Article 191 par. 1 of the Act of 9 June 2011 on Family Support and Foster Families (Journal of Laws of 2018, item 998, as amended).

<sup>42</sup> Art. 191 par. 3 of the Act on Family Support and Foster Families.

<sup>43</sup> Journal of Laws of 2018, item 2268.

In the competence dispute for determination of the authority competent for examining the appeal in the case of granting a benefit in a material form to the benefit of the communal water company, the Supreme Administrative Court stated that it belongs to the competence of the local government board of appeal, since the new Act – the Water Law in the cases concerning determination of benefits to the benefit of the communal water company did not introduce any amendments in the scope of the substantive jurisdiction of authorities or the instance jurisdiction. It results from the combination of the previously binding Article 171 par. 2 of the Water Law of 2001 with the currently binding Article 454 par. 3 of the Water Law and Article 545 par. 4, with regard to Article 454 par. 3 of the Water Law (order of 19 September 2019, Case No. II OW 44/19, 45/19).

## Complaint against the breach of the right of a party to have its case examined in court without undue delay

Based on Article 2 of the Act of 17 June 2004 on a Complaint Regarding the Breach of the Right of a Party to Have its Case Examined in Preparatory Proceedings Conducted or Supervised by the Public Prosecutor and in Court Proceedings without Undue Delay<sup>44</sup>, a party may file a complaint requesting a declaration that in the proceedings which the complaint relates to, its right to have its case examined without undue delay was violated if the proceedings take longer than necessary to clarify the factual and legal matters which are relevant to the settlement of the case or longer than necessary to handle the enforcement case or any other procedure regarding the enforcement of the court decision (excessive length of proceedings).

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*The SAC hears complaints against excessive length of proceedings before a voivodship administrative court or the Supreme Administrative Court.*

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<sup>44</sup> Journal of Laws of 2018, item 75.

In 2019, the SAC received 33 complaints for the breach of the right of a party to have its case examined in proceedings before the SAC without undue delay and 141 complaints by voivodship administrative courts. With regard to the complaints concerning the SAC, out of 17 resolved cases, none of the complaints were upheld, while in the case of voivodship administrative courts out of 145 resolved cases 4 complaints were upheld, and the awarded amount of PLN 12,000 concerned the Warsaw VAC.

## Motion for a declaration of a legally binding judicial decision unlawful

In compliance with Article 285a par. 1 of the Law on Proceedings before Administrative Courts, the motion for a declaration of a legally binding judicial decision unlawful is vested with regard to the final decision of the voivodship administrative court, since by issuance thereof a party shall incur a damage, and an amendment or repealing of the decision by other legal measures vested in the party was not and is not possible. In par. 3 it was decided that decisions of the Supreme Administrative Court cannot be complained against except when the non-compliance with the law results from the gross violation of norms of the European Union law.

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*In 2019 the SAC received 13 motions for a declaration of a legally binding judicial decision unlawful: 9 regarding SAC decisions and 4 VAC decisions.*

In case the motion is brought against a decision issued by the SAC, the non-compliance with the EU law has to take on a qualified form (Article 285a par. 3) (judgments from: 25 April 2019, Case No. II FNP 1/19 and 29 May 2019, Case No. II FNP 3/19 – II FNP 6/19). The possibility of basing the complaint on the statement of non-compliance of the final decision of the SAC with the law pursuant to Article 285a of the Law on Proceedings before Administrative Courts on the violation of Article 47 of the Charter of Fundamental Rights requires indication of EU legal provisions which were applied in the case (order of 10 April

2019, Case No. II ONP 6/18). In the light of Article 285d of the Law on Proceedings before Administrative Courts in fine the complaint can be based solely on facts found by the authority or the court (judgment of 15 May 2019, I FNP 2/19).

In 2019, 9 motions for a declaration of a legally binding judicial SAC decision unlawful were received. 27 cases were resolved, including 15 dismissed and 12 rejected. 4 motions for a declaration of a legally binding judicial VAC decision unlawful. 6 cases were resolved, including 1 dismissed and 5 rejected.

## RESOLUTIONS OF THE SUPREME ADMINISTRATIVE COURT 2010-2019

YEAR	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
TOTAL	18	20	23	27	19	17	16	20	9	6
FINANCIAL CHAMBER	6	8	10	9	9	9	9	12	5	3
COMMERCIAL CHAMBER	4	3	5	4	4	2	3	2	0	0
GENERAL ADMINISTRATIVE CHAMBER	8	8	8	14	6	6	4	6	4	3

*The Supreme Administrative Court adopts resolutions aimed at clarifying the legal provisions whose application caused discrepancies in the jurisprudence of administrative courts, upon the request of the President of the Supreme Administrative Court, the Public Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights (Ombudsman) or the Commissioner for Small and Medium Entrepreneurs, the Commissioner for Children's Rights (the so-called 'abstract' resolutions), and resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case (the so-called 'concrete' resolutions). A resolution of the Supreme Administrative Court panel of seven judges is binding in the relevant case.*

## CASSATION APPEALS SETTLED BY THE SUPREME ADMINISTRATIVE COURT 2004-2019

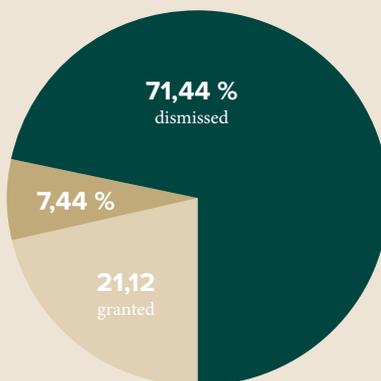
YEAR	TOTAL NUMBER OF CASES TO RESOLVE <i>(Left from previous period + registered in given year)</i>	NUMBER OF CASES RESOLVED <i>(Total)</i>	CASES REMAINED FOR THE NEXT YEAR
2004	6 167	2 918	3 249
2005	12 798	6 535	6 263
2006	16 700	8 788	7 912
2007	17 342	9 347	7 995
2008	18 114	9 389	8 725
2009	19 185	10 013	9 172
2010	20 848	10 922	9 926
2011	24 592	11 352	13 243
2012	28 260	12 276	15 984
2013	32 764	13 493	19 271
2014	37 058	14 994	22 064
2015	40 698	14 892	25 806
2016	44 653	16 829	27 824
2017	45 570	19 192	26 379
2018	46 608	18 959	27 649
2019	44 493	16 407	28 086

### NUMBER OF CASSATION APPEALS SETTLED IN 2019 BY THE SUPREME ADMINISTRATIVE COURT (by the outcome of the case brought)

**16 407** TOTAL

**3 465** granted  
**11 721** dismissed  
**1 221** settled in another way

settled in another way

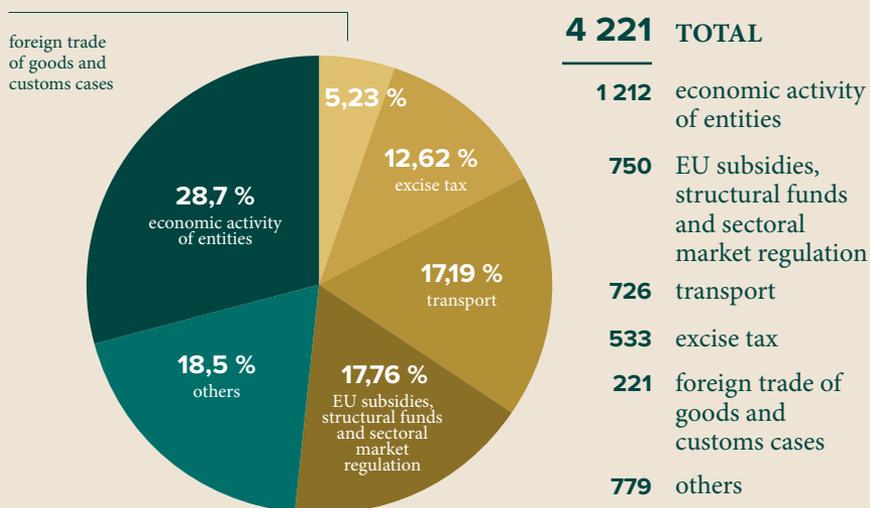


## CASSATION APPEALS 2019 BY THE COURT OF ORIGIN

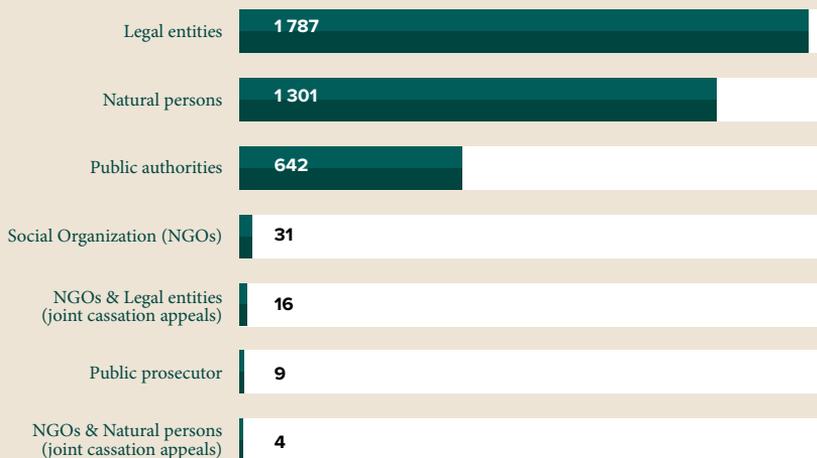
VOIVODSHIP ADMINISTRATIVE COURT (S)	TOTAL NUMBER OF CASSATION APPEALS LODGED	% OF ALL REGISTERED CASES	TOTAL NUMBER OF CASSATION APPEALS SETTLED
ALL COURTS	16 844	100	16 407
BIAŁYSTOK	415	2,46	529
BYDGOSZCZ	633	3,76	462
GDAŃSK	1 065	6,32	891
GLIWICE	1 126	6,68	1 350
GORZÓW WLKP.	381	2,26	394
KIELCE	292	1,73	393
KRAKÓW	959	5,69	1 053
LUBLIN	599	3,56	677
ŁÓDŹ	862	5,12	852
OLSZTYN	384	2,28	470
OPOLE	315	1,87	312
POZNAŃ	1 098	6,52	1 028
RZESZÓW	614	3,65	609
SZCZECIN	651	3,86	788
WARSZAWA	6 509	38,64	5 576
WROCŁAW	914	5,59	1 023

# COMMERCIAL CHAMBER

## NUMBER OF CASSATION APPEALS SETTLED IN 2019 BY SUBJECT

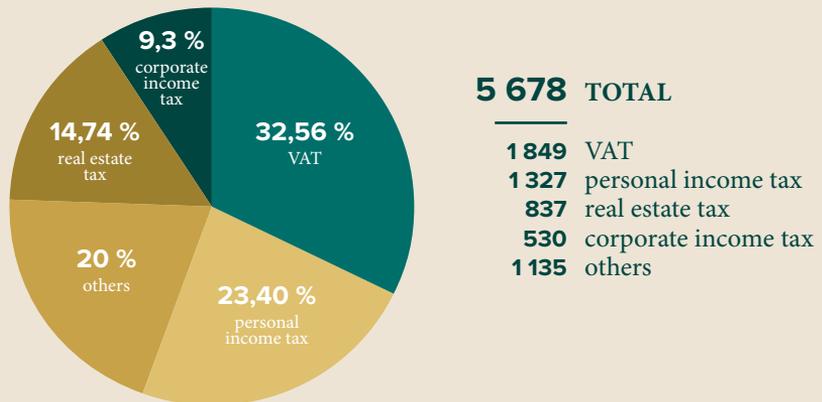


## NUMBER OF CASSATION APPEALS BROUGHT BEFORE THE COMMERCIAL CHAMBER IN 2019 BY COMPLAINANTS

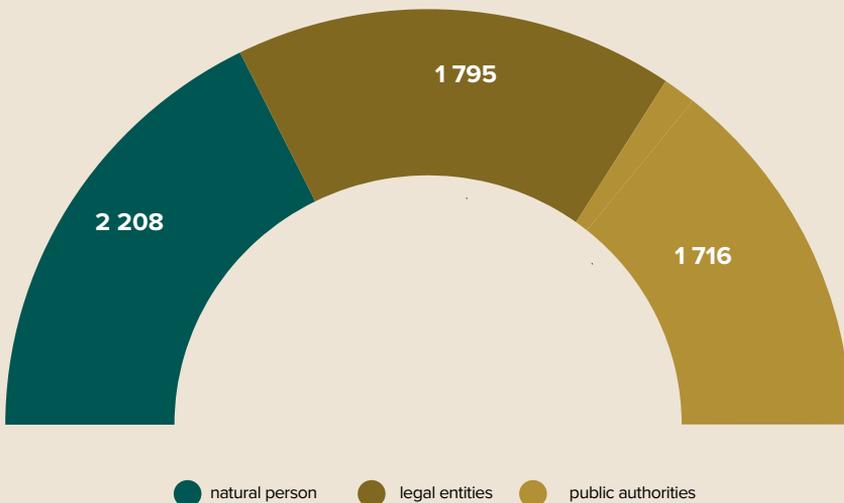


# FINANCIAL CHAMBER

## NUMBER OF CASSATION APPEALS SETTLED IN 2019 BY SUBJECT



## NUMBER OF CASSATION APPEALS SETTLED AT A HEARING AND IN CAMERA BY THE FINANCIAL CHAMBER IN 2019 BY COMPLAINANTS\*



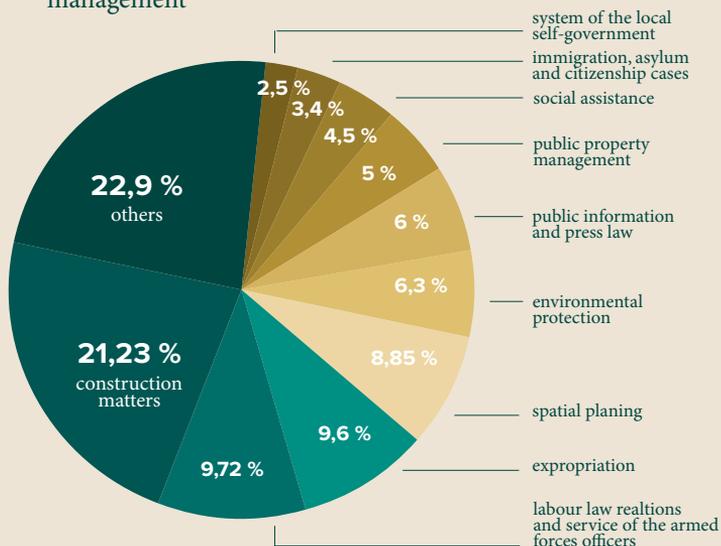
\* These numbers in case of data regarding Financial Chamber do not add up - each category is calculated individually.

# GENERAL ADMINISTRATIVE CHAMBER

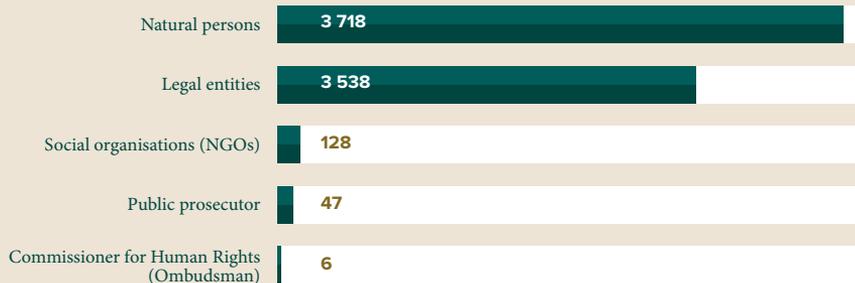
## NUMBER OF CASSATION APPEALS SETTLED IN 2019 BY SUBJECT

**6 508** TOTAL

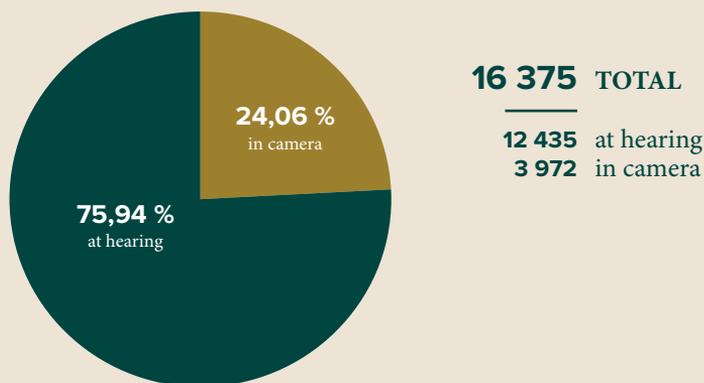
<b>1 382</b> construction matters	<b>411</b> environmental protection
<b>576</b> spatial planning	<b>633</b> labour law relations and service of the armed forces officers
<b>625</b> expropriation	<b>163</b> system of the local self government
<b>294</b> social assistance	<b>221</b> immigration, asylum and other foreigners and citizenship cases
<b>393</b> public information and press law	<b>1 481</b> others
<b>329</b> public property management	



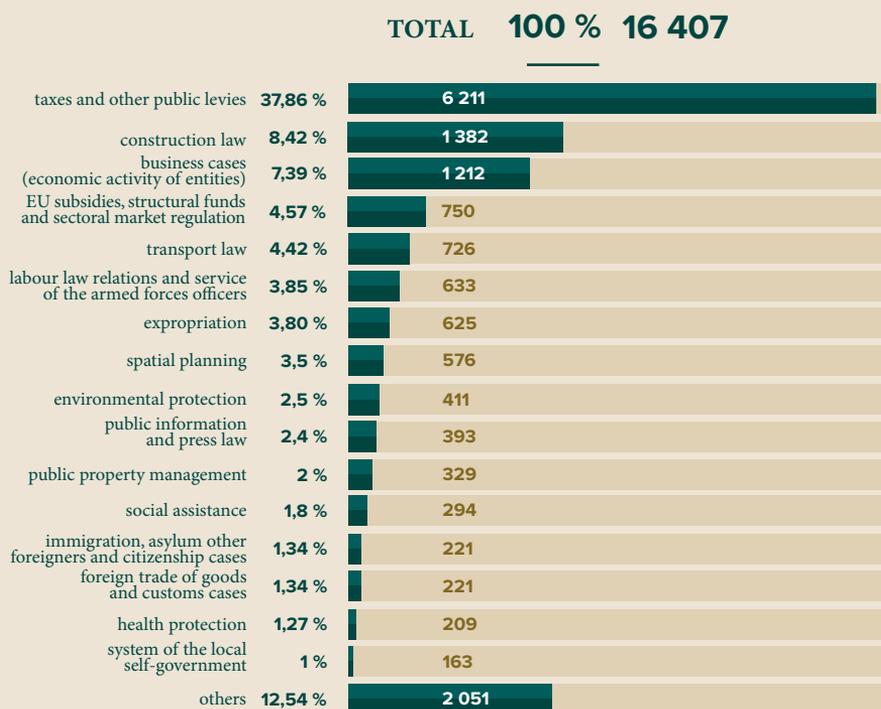
## NUMBER OF CASSATION APPEALS BROUGHT BEFORE THE GENERAL ADMINISTRATIVE CHAMBER IN 2019 BY COMPLAINANTS



## NUMBER OF CASSATION APPEALS HEARD BY THE SUPREME ADMINISTRATIVE COURT IN 2019 BY MODE OF PROCEDURE



## NUMBER OF CASSATION APPEALS SETTLED BY THE SUPREME ADMINISTRATIVE COURT IN 2019 BY SUBJECT



## CASSATION APPEALS 2019 BY CHAMBERS OF THE SUPREME ADMINISTRATIVE COURT

CHAMBER OF THE SUPREME ADMINISTRATIVE COURT	<i>Number of cases left over from the previous period</i>	<i>cases registered</i>	<i>cases resolved</i>	<i>cases remained to decide for the next period</i>
TOTAL	27 649	16 844	16 407	28 086
GENERAL ADMINISTRATIVE CHAMBER	9 400	7 437	6 508	10 329
FINANCIAL CHAMBER	10 490	5 650	5 678	10 462
COMMERCIAL CHAMBER	7 759	3 757	4 221	7 295

## NUMBER OF REFERENCES FOR A PRELIMINARY RULING OF THE COURT OF JUSTICE OF THE EUROPEAN UNION REFERRED BY THE POLISH ADMINISTRATIVE COURTS PER YEAR

YEAR	SUPREME ADMINISTRATIVE COURT	VOIVODSHIP ADMINISTRATIVE COURTS	TOTAL
2005	–	1	1
2006	–	2	2
2007	1	3	4
2008	2	1	3
2009	4	1	5
2010	5	4	9
2011	3	–	3
2012	5	2	7
2013	7	1	8
2014	2	3	5
2015	5	–	5
2016	8	–	8
2017	5	2	7
2018	3	3	6
2019	5	3	8
TOTAL 2005 -2019	55	26	81

# APPLICATION OF EUROPEAN LAW BY POLISH ADMINISTRATIVE COURTS

In the jurisprudence of administrative courts, the EU law issues arose in cases regarding indirect tax matters (including value added tax and excise duty), as well as income tax, tax on civil law transactions, real estate tax, customs law, road and air transport, environmental protection and spatial management, construction, sanitary, veterinary and pharmaceutical supervision, access to public information, social security, games and mutual wagering, agricultural law and financial aid from EU funds, as well as in cases of foreigners, technical inspection and standardisation and industrial property.

The European Union law is quoted by administrative courts in both judgments and orders, and in the resolutions adopted by the Supreme Administrative Court with the pro-EU interpretation of domestic law provisions. The principle stipulated in Article 91 of the Constitution of the Republic of Poland (direct application of the international law and the EU law and priority thereof in case of a collision with statutes - acts of parliament) was adhered to.

In their judicial decisions, administrative courts also referred to the jurisprudence of the Court of Justice of the European Union (hereinafter: the CJEU). The purpose of this reference to the EU jurisprudence was to determine the relevance of a specific EU law applicable to the case. Administrative courts also referred to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>45</sup> (ECHR) and to the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR). References were made in particular in cases relating to the guarantee of the right to a fair trial (including effective means of challenge, ne bis in idem prohibition, legal aid), protection of property rights and in cases involving foreigners. Decisions of the ECtHR were referred to in the justifications of administrative court decisions as subsidiary argumentation – i.e. as additional justification for the constitutional standards applied.

*Administrative courts referred to the case-law of the CJEU to determine the relevance of a given EU law applicable to the case, and to assess the applicability of the EU law to the cases in question.*

Administrative courts also referred to the Charter of Fundamental Rights of the European Union (hereinafter: CFREU)<sup>46</sup> as part of the subsidiary arguments, i.e. in order to indicate that certain rights and freedoms of individuals are protected and guaranteed not only in the Constitution of the Republic of Poland or in the ECHR, but also within the EU legal system (which manifests the multi-centric structure of the current legal order). These references concerned in particular the right to recourse to court, the right to good administration, and the principle of proportionality.

The European law *sensu largo* was also applied in the interpretation process of the Polish law.

Similarly as in the previous years, administrative courts exercised the right to refer to the CJEU with requests for preliminary rulings concerning the interpretation of the EU law.

<sup>45</sup> Convention for the Protection of Human Rights and Fundamental Freedoms established in Rome on 4 November 1950 (Journal of Laws of 1993, No. 61, item 284, as amended); hereinafter: the European Convention or the ECHR.

<sup>46</sup> EU Official Journal C 2010.389.

## Requests for preliminary rulings to the CJEU

In 2019, Polish administrative courts submitted requests for preliminary rulings to the CJEU in 8 cases, including 5 orders issued by SAC adjudicating panels, 2 orders issued by the Wrocław VAC and one order by the Gliwice VAC.

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*In 2019, Polish administrative courts referred to the CJEU for a preliminary ruling in 8 cases.*

By order of 6 June 2019, in case I FSK 1290/18 (CJEU Case No. C-703/19 *Director of the Tax Administration Chamber in Katowice*) the SAC referred to the CJEU for preliminary ruling the following questions: “1. Does the concept of a ‘restaurant service’ to which a reduced rate of VAT applies (Article 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>47</sup>, read in conjunction with point (12a) of Annex III thereto and with Article 6 of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax<sup>48</sup>, cover the sale of prepared dishes under conditions such as those in the main proceedings, that is to say, in a situation where: the seller makes available to the buyer the infrastructure which enables him or her to consume the purchased meal on the premises (separate dining space, access to toilets); there is no specialised waiter service; there is no service in the strict sense; the ordering process is simplified and partly automated; the customer’s ability to customise the order is limited? 2. Is the way in which the dishes are prepared, consisting in, in particular, the heating of certain semi-finished products and the composing of prepared dishes from semi-finished products, relevant to answering the first question? 3. In order to answer the first question, is it sufficient that the customer is potentially able to use the infrastructure offered or is it also necessary to establish that, for the average customer, this element constitutes an essential part of the service provided?”

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<sup>47</sup> Official Journal L 2006.347.1, as amended.

<sup>48</sup> Official Journal L 2011.77.1–22.

By order of 19 June 2019, in case I SA/Wr 295/19 (CJEU Case No. C-604/19 *Wrocław Municipality*) the SAC referred to the CJEU for preliminary ruling the following questions: „1. *Does the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law, such as in the circumstances of the present case, constitute a supply of goods within the meaning of Article 14(2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax read in conjunction with Article 2(1)(a) thereof (EU OJ 2006 L 347, p. 1, as amended; hereinafter: Directive 112), which is subject to value added tax (‘VAT’)?* 2. *If the answer to Question 1 is in the negative, does the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law constitute a supply of goods within the meaning of Article 14(1) of Directive 2006/112, read in conjunction with Article 2(1)(a) thereof, which is subject to VAT?* 3. *Does a municipality that charges fees for the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law, such as in the circumstances of the present case, act as a taxable person within the meaning of Article 9(1) of Directive 2006/112, read in conjunction with Article 2(1)(a) thereof, or as a public authority within the meaning of Article 13 of that directive?*

By the order of 26 June 2019 in case II GOK 2/18, the SAC referred to the CJEU for preliminary ruling the following question: “*Should Article 2 TEU, in conjunction with the third sentence of Article 4(3), Articles 6(1) and 19(1) TEU, in conjunction with Article 47 of the Charter of Fundamental Rights and Article 9(1) of Council Directive 2000/78/EC and the third paragraph of Article 267 TFEU, be interpreted as meaning that: an infringement of the rule of law and of the right to an effective remedy and to effective judicial protection occurs in a situation where the national legislature removes from the legal system relevant provisions on the competences of the Supreme Administrative Court and the right of appeal to this court against resolutions issued by the National Council of the Judiciary, as well as introduces a solution, under which proceedings*

*in cases of mentioned appeals, initiated and not completed before the day of introduced changes (derogation), are subject to discontinuation by law, which as a result: – undermines the right to fair trial in the scope referring to the control of mentioned resolutions of the National Council of the Judiciary and controls of the correctness of qualification procedures, in which they have been undertaken? – and, in where the domestic court originally competent in the mentioned cases, after effective initiation of the control procedure of indicated resolutions of the National Council of the Judiciary, submitted to the Court of Justice of the European Union requests for preliminary rulings, undermines the right to fair trial also in the scope in which, in individual case pending before the court (originally) competent for examination thereof, then, deprives this court of the effective initiation of the preliminary ruling procedure before the Court of Justice of the European Union and the right to wait for the judicial decision, which undermines the European Union principle of loyal cooperation?”*

By order of 3 October 2019, in case I SA/Wr 448/19 (CJEU Case No. C-935/19 *Grupa Warzywna*) the Wrocław VAC subjected to the CJEU for preliminary ruling the following questions: *“Is an additional tax liability such as that provided for in Article 112b(2) of the Law on VAT compatible with the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>49</sup> (in particular Articles 2, 250 and 273 thereof), Article 4(3) of the Treaty on European Union, Article 325 TFEU and the principle of proportionality?”*

By order of 17 October 2019, in case I FSK 2248/18 (CJEU Case No. C-855/19 *Director of the Tax Administration Chamber in Bydgoszcz*) the SAC referred to the CJEU for preliminary ruling the following questions: *“Do Article 110 of the Treaty on the Functioning of the European Union (consolidated version 2012)<sup>50</sup> and Article 273 of Council Directive*

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<sup>49</sup> OEU Official Journal L 2006.347.1, as amended; hereinafter: Directive 112.

<sup>50</sup> EU Official Journal C 2012.326.1 et seq.

2006/112/EC of 28 November 2006 on the common system of value added tax<sup>51</sup> not preclude a provision such as Article 103(5a) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on the tax on goods and services)<sup>52</sup>; ‘the VAT Law’, which stipulates that, in the case of an intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of the customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty: 1) within 5 days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit — if the goods are the subject of intra-Community acquisition within the meaning of the Ustawa z dnia 6 grudnia 2008 r. o podatku akcyzowym (Law of 6 December 2008 on excise duty) by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty; 2) within 5 days of the date on which such goods enter a tax warehouse from the territory of a Member State other than Poland; 3) upon the movement of these goods within the territory of Poland — if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty?”

By the order of 4 November 2019 in case II OSK 2470/19 (CJEU Case No. C-949/19 *M.A.*), the SAC referred to the CJEU for preliminary ruling the following question: “Must Article 21(2a) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders<sup>53</sup> in conjunction with the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union<sup>54</sup> be interpreted as meaning that a third-country national who has been

<sup>51</sup> EU Official Journal L 2006.3471, as amended; hereinafter: Directive 2006/112/EC.

<sup>52</sup> Journal of Laws of 2016, item 710, as amended; hereinafter: the VAT Law.

<sup>53</sup> EU Official Journal L 2000.239.19.

<sup>54</sup> Official Journal C 2012.326.391–407.

*refused a long-stay visa and who cannot exercise the right to move freely within the territories of the other Member States under Article 21(1) of the Convention implementing the Schengen Agreement must have the right to an effective remedy before a tribunal?”*

By the order of 4 November 2019 in case I SA/GI 495/19 (CJEU Case No. C-895/19 A.), the Gliwice VAC referred to the CJEU for preliminary ruling the following question: *“Is Article 167 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>55</sup>, in conjunction with Article 178 thereof, to be interpreted as precluding national legislation which makes the exercise of the right to deduct input tax in the same accounting period as that in which the tax due was payable on the transactions constituting Community acquisitions of goods subject to entry of the tax due on those transactions in the appropriate tax declaration submitted within the mandatory period (in Poland, three months) following the end of the month in which the tax liability arose in relation to the goods and services acquired?”*

By the order of 15 November 2019 in case I FSK 1535/17 (CJEU Case No. C-48/20 P), the SAC referred to the CJEU for preliminary ruling the following question: *“Must Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>56</sup> and the principle of proportionality be interpreted as precluding the application, in a situation such as that in the main proceedings, of a national provision such as Article 108(1) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on tax on goods and services)<sup>57</sup> to invoices with VAT incorrectly indicated that were issued by a taxable person acting in good faith, if: – the taxable person’s actions did not involve tax fraud, but resulted from an erroneous interpretation of the law by the parties to the*

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<sup>55</sup> EU Official Journal L 2006.3471 et seq., as amended.

<sup>56</sup> EU Official Journal L 2006.3471, as amended.

<sup>57</sup> Journal of Laws of 2011, No. 177, item 1054, as amended.

*transaction, based on an interpretation given by the tax authorities and a common practice in that respect at the time of the transaction, which incorrectly assumed that the issuer of the invoice was supplying goods when in fact it was providing a VAT-exempt financial intermediation service; and – the recipient of the invoice with the VAT incorrectly indicated would have been entitled to claim a VAT refund if the transaction had been correctly invoiced by a taxable person who was actually supplying the recipient with goods?”*

## Preliminary rulings in response to questions from Polish administrative courts

In the judgment of 8 May 2019, in case C-566/17 *Związek Gmin Zagłębia Miedziowego*, answering the request for preliminary ruling referred by the Wrocław VAC<sup>58</sup>, the CJEU stated: “Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national practice which permits a taxable person to deduct in full the input value added tax (VAT) charged in respect of his acquisition of goods and services for the purposes of both economic activities subject to VAT and non-economic activities not falling within the scope of VAT, owing to the lack of specific rules in the applicable tax legislation regarding the criteria and methods of apportionment which would enable that taxable person to determine the share of that input VAT which must be regarded as being connected to his economic and non-economic activities respectively.”

In the judgment of 2 May 2019, in case C-224/18 *Budimex*, answering the request for preliminary ruling referred by the SAC<sup>59</sup>, the CJEU

In 2019 the Polish administrative judiciary received 6 preliminary rulings of CJEU in response to questions referred by its Courts.

<sup>58</sup> Order of the Wrocław VAC of 10 July 2017, I SA/Wr 123/17.

<sup>59</sup> Order of the SAC of 28 November 2017, I FSK 65/16.

stated: *“Point (c) of the first paragraph of Article 66 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as not precluding, if an invoice relating to the performance of the service supplied is not issued or is issued late, the formal acceptance of that service from being regarded as the time when that service was supplied, where, as in the case in the main proceedings, the Member State provides that VAT is to become chargeable on expiry of a time limit running from the day when the service was supplied, provided, first, that the formality of acceptance was stipulated by the parties in the contract that binds them according to contractual terms reflecting the economic and commercial realities in the field in which the service is supplied and, second, that that formality constitutes the actual completion of the service and determines the amount of consideration due, which is for the referring court to ascertain.”*

In the judgment of 2 May 2019, in case C-225/18 *Grupa Lotos*, answering the request for preliminary ruling referred by the SAC<sup>60</sup>, the CJEU stated: *“Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as: – precluding national legislation, such as that at issue in the main proceedings, which provides for the scope of an exclusion from the right to deduct value added tax (VAT) to be extended, after the accession of the Member State concerned to the European Union, and which means that a taxable person, providing tourism services, is deprived, from the entry into force of that extension, of the right to deduct VAT paid on the purchase of overnight accommodation and catering services which that taxable person re-invoices to other taxable persons in the context of the provision of tourism services and – not precluding national legislation, such as that at issue in the main proceedings, which provides for the exclusion from the right to deduct VAT paid on the purchase of overnight accommoda-*

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<sup>60</sup> Order of the SAC of 23 October 2017, I FSK 2084/15.

*tion and catering services, that exclusion having been introduced before the accession of the Member State concerned to the European Union and maintained thereafter, in accordance with the second paragraph of Article 176 of Directive 2006/112, and which means that a taxable person, who does not provide tourism services, is deprived of the right to deduct VAT paid on the purchase of such overnight accommodation and catering services which that taxable person re-invoices to other taxable persons.”*

In the judgment of 15 May 2019, in case C-235/18 *Vega International Car Transport and Logistic*, answering the request for preliminary ruling referred by the SAC<sup>61</sup>, the CJEU stated: “Article 135(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, the provision of fuel cards by a parent company to its subsidiaries, enabling those subsidiaries to refuel the vehicles they transport, may be classified as a service granting credit which is exempt from value added tax as referred to in that provision.”

In the judgment of 3 July 2019, in case C-387/18 *Delfarma*, answering the request for preliminary ruling referred by the Warsaw VAC<sup>62</sup>, the CJEU stated: “Articles 34 and 36 TFEU must be interpreted as precluding the legislation of a Member State, such as that at issue in the main proceedings, which requires, for the issue of a parallel import licence for a medicinal product, that that medicinal product and the medicinal product which has been granted a marketing authorisation in that Member State are both reference medicinal products or both generic medicinal products and which, therefore, prohibits the issue of any parallel import licence for a medicinal product where it is a generic medicinal product whereas the medicinal product previously authorised in that Member State is a reference medicinal product.”

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<sup>61</sup> Order of the SAC of 23 November 2017, I FSK 63/16.

<sup>62</sup> Order of the Warsaw VAC of 18 April 2018, VI SA/Wa 2256/17.

In the judgment of 17 October 2019, in case C-653/18 *Unitel*, answering the request for preliminary ruling referred by the SAC<sup>63</sup>, the CJEU stated: “1. Article 146(1)(a) and (b) and Article 131 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principles of fiscal neutrality and proportionality must be interpreted as precluding a national practice, such as that at issue in the main proceedings, which consists in considering in all cases that there is no supply of goods, within the meaning of that former provision, and in refusing as a result the value added tax (VAT) exemption, where the goods concerned were exported to a destination outside the European Union and where, following their exportation, the tax authorities found that the person acquiring those goods was not the person stated on the invoice issued by the taxable person but another entity which has not been identified. In such circumstances, the VAT exemption provided for in Article 146(1) (a) and (b) of that directive must be refused if the failure to identify the person actually acquiring the goods prevents it from being proved that the transaction at issue constitutes a supply of goods within the meaning of that provision or if it is established that that taxable person knew or ought to have known that that transaction was part of a fraud committed to the detriment of the common system of VAT. 2. Directive 2006/112 must be interpreted as meaning that where, in those circumstances, there is a refusal to grant the value added tax (VAT) exemption provided for in Article 146(1) (a) and (b) of Directive 2006/112, the transaction in question should be considered not to constitute a taxable transaction and, accordingly, not to confer entitlement to the deduction of input VAT.”

## Enforcement of preliminary rulings

Following the issuance of preliminary rulings by the CJEU in 2019, the SAC resumed the suspended proceedings in cases in which it had

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<sup>63</sup> Order of the SAC of 19 June 2018, I FSK 126/18.

previously referred for preliminary rulings, as well as in other cases where the suspension was justified by a previous motion for preliminary ruling to the CJEU. In addition, administrative courts referred to the justification of the CJEU included in issued judicial decisions in settling cases whose result was dependent on CJEU's response and in cases analogous to those in which the question was submitted.

The example of enforcement of the CJEU's judgment of 2 May 2019 in case C-224/18 *Budimex* initiated with the request for preliminary ruling of the ruling panel is the judgment of 18 July 2019, Case No. I FSK 65/16. In the context of the CJEU's interpretation of Article 66, first paragraph, letter c) of the Council Directive 2006/112/EC, the SAC stated that the acceptance of the work stipulated in the contract for the supply of construction and construction-installation services in case this type of requirement reflects the conventional rules and standards in the field, in which the service is supplied, is decisive in determining whether that service has in fact been supplied for the purposes of determining the moment when the chargeable event occurs pursuant to Article 19a par. 5 point 3 letter a) in conjunction with Article 19a par. 1 and 2 and Article 106 i par. 3 point 1 of the Act of 11 March 2004 on VAT<sup>64</sup> arose.

In the judgment of 10 July 2019, Case No. I SA/Wr 123/17 the Wrocław VAC took into consideration the interpretation of Article 168 letter a) of the Council Directive 2006/112/EC issued by CJEU in the judgment in case C-566/17 *Związek Gmin Zagłębia Miedziowego*, issued as a result of the request for a preliminary ruling submitted in the resolved case. The essence of the legal problem in the case concerned the scope of the right of deduction of the calculated tax related to the purchase of goods and services used both for the purposes of a taxable person's transactions falling within the scope of VAT, and falling outside the scope of VAT. As a result of the CJEU's judgment in case C-566/17, the Wrocław VAC

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<sup>64</sup> Journal of Laws of 2018, item 2174, as amended.

referred to the principle of primacy and the principle of effectiveness of EU law and waived the interpretation of the law included in the resolution of 24 October 2011, Case No. I FPS 9/10, in which the SAC stated: *“In the light of provisions of Article 86 par. 1 and Article 90 par. 1 and 2 of the Act of 11 March 2004 on VAT<sup>65</sup> transactions not subject to VAT cannot influence the scope of the right to deduct the tax calculated with the application of Article 90 par. 3 of the aforementioned Act.”* Within the interpretation of Article 168(a) of Council Directive 2006/112/EC, the CJEU expressed dissenting opinion underlining *“precluding a national practice which permits a taxable person to deduct in full the input value added tax (VAT) charged in respect of his acquisition of goods and services for the purposes of both economic activities subject to VAT and non-economic activities not falling within the scope of VAT, owing to the lack of specific rules in the applicable tax legislation regarding the criteria and methods of apportionment which would enable that taxable person to determine the share of that input VAT which must be regarded as being connected to his economic and non-economic activities respectively.”* In the context of the preliminary ruling, the court examining the Case No. I SA/Wr 123/17 interpreted in compliance with the EU law Article 86 par. 1 of the Act of 11 March 2004 on VAT. In the court’s opinion Article 86 par. 1 of the Act on VAT<sup>66</sup> directly indicates that the taxpayer is not vested with the right to fully deduct VAT with regard to the transactions not subject to VAT.

## Refusal to submit a request for preliminary ruling

The reason for refusing by administrative courts to refer to the CJEU with requests for preliminary rulings for which the party applied consisted in deciding that the legal issue occurring in the case does not

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<sup>65</sup> Journal of Laws of 2004, No. 54, item 535, as amended.

<sup>66</sup> Journal of Laws of 2016, item 710, as amended.

raise any doubts and therefore, does not require applying the procedure provided for in Article 267 of the TFEU (so-called: *acte clair*) or is sufficiently explained in the hitherto judicial decisions of the CJEU (so-called: *acte éclairé*)<sup>67</sup>. For example, in case II OSK 3002/18 the SAC refused on the grounds of Article 267 TFEU to submit the request for preliminary ruling to the CJEU with regard to the validity and interpretation of Article 12 par. 1 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.<sup>68</sup> The court did not share the doubts in the scope of the interpretation and compliance of Article 12 par. 1 of Directive 2008/115 with Article 47 of the CFREU. According to the SAC, the standard of procedural safeguards in cases, in which classified information is used and Article 47 of the Charter, which has been indicated in the judgment of the CJEU of 4 June 2013 in case C-300/11 ZZ, applies. The court underlined that Article 12 par. 1 of Directive 2008/115 provides for the possibility of limiting the justification. Whereas, in Article 30 par. 2 of Directive 2004/38, which was the subject of interpretation in the CJEU's judgment in case ZZ, the European Union legislation provided that persons concerned shall be informed of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security. While comparing the aforementioned provisions, the SAC noticed that the provision applicable in the examined case stipulates even higher standard of procedural safeguards than the one stipulated in Article 30 par. 2 of Directive 2004/38.

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<sup>67</sup> See, in particular, justification of the judgment of the SAC of 28 June 2019, I OSK 2151/17. The Polish text of the judgment is available in the Central Database of Judicial Decisions of Administrative Courts: <http://orzeczenia.nsa.gov.pl/doc/0B68F8EEDD>

<sup>68</sup> EU Official Journal L 2008.348.98.

# NON-JUDICIAL ACTIVITIES OF THE ADMINISTRATIVE COURTS

*The President of the SAC exercises hierarchical judicial supervision through the Judicial Decisions Bureau whereas in terms of establishing the conditions for efficient functioning of administrative courts is supported by the Chancellery of the President.*

Duties of the President of the SAC in the domain of supervision over judicial and organizational activities of administrative courts are regulated in the Law on the System of Administrative Courts, secondary legislation, including the Regulation of the President of the Republic of Poland of 18 September 2003 on Detailed Procedures for the Supervision of Administrative Activities of Voivodship Administrative Courts<sup>69</sup>, and the resolution “Rules of the internal procedure and organisation of the Supreme Administrative Court”, adopted by the General Assembly of Judges of the SAC on 8 November 2010<sup>70</sup>. The President of the SAC exercises hierarchical judicial supervision through the Judicial Decisions Bureau, while the tasks related to establishing the conditions for efficient functioning of administrative courts, in particular in matters of organisation, finance, human resources, administration and economy, are performed by the Chancellery of the President. Tasks concerning, among others, providing information on the rights of the parties, pro-

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<sup>69</sup> Journal of Laws No. 169, item 1645; hereinafter: Regulation of the President of the Republic of Poland.

<sup>70</sup> MP (Official Gazette) No. 86, item 1007; hereinafter: the Rules.

viding public information on the activity of the SAC, keeping statistics and other cases are performed by the Court Information Division.

## Judicial Decisions Bureau

The SAC's Judicial Decisions Bureau employs judges and specialists in various fields of law, including persons with academic background. The Judicial Decisions Bureau performs tasks related to carrying out activities by the President of the SAC regarding the efficiency of court proceedings and jurisprudence of administrative courts. Detailed supervisory activities of the President of the SAC over administrative activity of courts performed at the Judicial Decisions Bureau are stipulated by the provisions of the Regulation of the President of the Republic of Poland of 18 September 2003 on the Detailed Mode of Performing Supervision over the Administrative Activity of Voivodship Administrative Courts<sup>71</sup>. Detailed tasks of organisational units of the Judicial Decisions Bureau are stipulated by the provisions of the Rules of the internal procedure and organisation of the Supreme Administrative Court constituting appendix to the Resolution of the General Assembly of Judges of the Supreme Administrative Court of 8 November 2010, as well as the order of the President of the Supreme Administrative Court<sup>72</sup> regulating the scope of competences of particular divisions and teams operating at the Bureau.

Within the structure of the Judicial Decisions Bureau, apart from the so-called inspection-problem divisions, the following divisions are functioning: the Division of Collection and Publication of Case Law of Administrative Courts, the Division of European Law and teams: Collection and Publication of Case Law of European Courts Team, Personal Data Protection Team and Economic Analysis Team.

*The Judicial Decisions Bureau performs tasks related to carrying out activities by the President of the SAC regarding the efficiency of court proceedings and case-law of administrative courts.*

<sup>71</sup> Journal of Laws No. 169, item 1645.

<sup>72</sup> MP No. 86, item 1007, as amended.

In the scope of supervisory activities related to the elimination of discrepancies in the judicial decisions of administrative courts, the Judicial Decisions Bureau conducts ongoing analysis of judicial decisions issued by voivodship administrative courts and the Supreme Administrative Court. In the case of any discrepancies in the judicial decisions, it submits to the President of the SAC relevant motions. It also studies legitimacy of applications submitted by various entities for submitting by the President of the SAC a motion, pursuant to Article 191 par. 1 point 1 of the Constitution of the Republic of Poland, to the Constitutional Tribunal. Furthermore, opinions on drafts of legal acts are drawn up at the Judicial Decisions Bureau and sent to the President of the SAC.

In 2019, judicial decisions of the SAC and voivodship administrative courts in the scope of the application and interpretation of the Constitution of the Republic of Poland, community law and international agreements, as well as consideration of case law of the Constitutional Tribunal, the Court of Justice of the European Union, the European Court of Human Rights and proper application of resolutions issued by the SAC were analysed at the Judicial Decisions Bureau. Judicial decisions of administrative courts were also analysed in terms of maintenance of uniformity thereof.

Furthermore, the subject of the Bureau's analyses comprised significant violations of the law and circumstances influencing occurrence thereof, indicated in signalling orders of ruling panels addressed at administration authorities, including administrative authorities' violations of the statutory principle of binding force of legal assessment expressed in the judgment, as well as the lack of activity of authorities and excessive length of proceedings. Analyses also covered dissenting opinions reported by judges in particular cases, among others, in the context of impact thereof on the uniformity of case law.

Discrepancies stated in the jurisprudence constitute the basis for recommendation of discussing a specific issue during judges' delib-

erations, as well as, in specific conditions, preparing a draft of an abstract question referred by the President of the SAC for passing by the extended panel of SAC judges a resolution aimed at an explanation of legal provisions, application of which resulted in discrepancies in the case law of administrative courts<sup>73</sup>, or a draft of the motion of the President of the SAC to the Constitutional Tribunal pursuant to Article 191 par. 1 point 1 of the Constitution of the Republic of Poland. In 2019, the Bureau received 4 motions for the referral of the President of the SAC to the Constitutional Tribunal, however, the analysis of the submitted motions did not confirm the doubts regarding the compliance of specific provisions with the Constitution and those motions were not upheld. However, 2 motions of the President of the SAC for examination by extended panels of SAC judges by passing a resolution explaining legal provisions, were drawn up. At the same time, the Bureau received 16 motions for referral of the President of the SAC for passing a resolution by the extended panel of SAC judges. Upon analysis thereof 1 motion was upheld and in the case of remaining motions there were no grounds for applying for passing a resolution by the extended panel of SAC judges.

Within the annual plan of work of the Judicial Decisions Bureau, legal specialists draw up analytical compilations concerning selected jurisprudence issues in the scope of the administrative courts' jurisdiction.

Within supervisory activities Presidents of Voivodship Administrative Courts were obliged to submit quarterly reports on the status of so-called "old" cases, i.e. pending for over 36 months in their subordinate units.

Within the Judicial Decisions Bureau's participation in legislative works, judges, members and other legal specialists of the Judicial Deci-

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<sup>73</sup> Pursuant to Article 15 par. 1 point 2 in conjunction with Article 264 par. 2 of the Law on Proceedings before Administrative Courts.

sions Bureau participate in drawing up opinions which are presented by the President of the SAC to addressees of sent drafts of legal acts and, in particular, analyse impact thereof on the system of administrative courts and proceedings before them. Moreover, they participate in inter-ministry consultations and sessions of Sejm and Senate committees.

In 2019, the Judicial Decisions Bureau gave opinions on 30 drafts of legal acts and legislative opinions, to 6 of which notes were made, among others, to the following bills: on digitalisation of serving and amendment of certain other acts; on the amendment of the Act on Enforcement Proceedings in Administration and Certain Other Acts; on the amendment of the Act on VAT and the Act – Tax Ordinance; on settlement of double taxation disputes and concluding prior price agreements.

## Chancellery of the President of the Supreme Administrative Court

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*The Chancellery of the President of the Supreme Administrative Court provides conditions for the efficient operation of the administrative judiciary.*

The scope of activities of the Chancellery of the President of the SAC includes performance of tasks related to the President of the SAC's performance of activities in the scope of providing conditions for the efficient operation of administrative courts, particularly in terms of financing, human resources, administration and economic matters.

The Chancellery of the President of the SAC is divided into Divisions: Organisational-Legal Division, Division for Judges, Court Assessors and Referendaries, General and Personal Matters Division, Administrative-Economic Division, Financial-Budgetary Division, IT Division, Technique and Investment Division.

Within the Organisational-Legal Division there are: the Team-Cabinet of the President (established in June 2019 in place of the Domestic and Foreign Relations Team operating since 2016) and the Publications and Library Team.

In 2019, similarly as in previous years, measures ensuring proper conditions for effective judicial decisions and functioning of administrative courts were undertaken, that is, activation of procedures aimed at recruitment for judge vacancies, update of the IT database and library, as well as providing relevant office, technical and IT equipment.

With regard to the entry into force on 31 May 2019 of legal acts computerising proceedings before administrative courts, i.e. the Act of 10 January 2014 amending the Act on the Computerization of Entities Performing Public Tasks and Certain Other Acts<sup>74</sup> and the Act of 12 April 2019 amending the Act – the Law on Proceedings Before Administrative Courts and Certain Other Acts<sup>75</sup>, relevant IT systems allowing performance of provisions of the aforementioned legal regulations were implemented in administrative courts. For the purposes of administrative courts the system of electronic document management developed by Podlaskie Voivodship Office in Białystok (so called EZD PUW) was properly adopted. Due to the efforts made by IT services of the Chancellery of the President of the SAC, the IT system for sharing digital images of court records (files of administrative court cases “PASSA” portal) was developed. These systems may be used by the parties and participants of the proceedings interested in, among others, submitting to administrative courts procedural writs in electronic form, receiving court correspondence in this form and obtaining access to court records online.

Within provision of appropriate premises for the Szczecin VAC, construction works related to the adjustment of the building acquired in 2015 for the benefit of this Court ended in 2019. All administrative courts were equipped with necessary office and technical equipment, as well as IT modernisation of equipment infrastructure necessary for the

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<sup>74</sup> Journal of Laws of 2014, item 183, as amended.

<sup>75</sup> Journal of Laws of 2019, item 934.

implementation of systems related to the computerisation of the administrative court proceedings was conducted.

Furthermore, in 2019, activities related to securing the general-organisational cooperation and international activity of the SAC, including in the scope of exchanging judiciary experiences and sharing knowledge on administrative courts, were conducted.

## Court Information Division

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*The Court Information Division informs parties about the competences of administrative courts and the status of cases dealt with by the Court, provides public information about the activities of the Court and media services to the Supreme Administrative Court and its President.*

In 2019, the activities of the Court Information Division (CID SAC) focused primarily on tasks resulting from the Resolution of the General Assembly of Judges of the Supreme Administrative Court of 8 November 2010 on the Rules of the internal procedure and organisation of the Supreme Administrative Court, in particular on: informing parties and interested persons on the competences of administrative courts and the status of cases dealt with by the Court, making the relevant case files available, providing public information about the activities of the Court, dealing with petitions, complaints and motions, providing media services to the SAC and its President, compiling court statistics, supervising the Central Database of Administrative Court Judgments (CBOIS) and performing other activities related thereto, as well as managing the maintenance of the SAC website and its Public Information Bulletin. The CID SAC supervised the carrying out of similar tasks in voivodship administrative courts. The Division also participated in the works of the Team for the Implementation at the Supreme Administrative Court of Requirements Aimed at Providing Accessibility to Persons with Special Needs, established in 2019<sup>76</sup>.

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<sup>76</sup> The Team was appointed with regard to the entry into force of the Act of 19 July 2019 on Providing Accessibility to Persons with Special Needs (Journal of Laws of 2019, item 1696).

## International cooperation of the Supreme Administrative Court

The SAC maintains regular international contact with the highest administrative courts in Europe and over the world. The court is a member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and the International Association of Supreme Administrative Jurisdictions (IASAJ). Both associations organise seminars and conferences on current issues concerning the functioning of administrative judiciary and exchange programmes for judges. The SAC is also a member of the Superior Courts Network (SCN) maintained by the European Court of Human Rights in Strasbourg and the European Judicial Network (Réseau Judiciaire de l'Union Européenne – RJUE) maintained by the Court of Justice of the European Union. Administrative court judges also participate in the work of the Association of European Administrative Judges (AEAJ) and improve their professional qualifications by taking part in seminars, internships and study visits organised by the European Judicial Training Network (EJTN). Furthermore, the SAC co-participates in developing legal-administrative standards of the EU, cooperating with the EJTN in organisation of internship for administrative courts' judges from other states in Poland.

*The Supreme Administrative Court maintains regular international (bilateral and multilateral) contacts with the highest administrative courts in Europe and in the world.*

In 2019, the SAC held bilateral meetings with the Council of State of France, the Federal Administrative Court of the Federal Republic of Germany, the Supreme Administrative Court of the Republic of Lithuania and Supreme Courts of Hungary and Latvia.

The scientific conference of the SAC judge assistants entitled *Assistant of the Administrative Court Judge – Comparative Law and Practical Issues* organised in October 2019, in Warsaw, with participation of foreign guests: judge of the Court of Justice of the European Union,

Professor Marek Safjan and Jagiellonian University Professor dr hab. Nina Półtorak – judge of the General Court of the European Union (GC) and assistants of judges from the Supreme Administrative Courts of the Czech Republic and the Republic of Lithuania, as well as the Federal Administrative Court of Germany, had a special character. The inaugural lecture given by Professor Safjan was devoted to the matters of applying the European law by a national judge, in particular, in the context of the principles of the effectiveness of the EU law and procedural autonomy of Member States, whereas, the lecture given by Professor Półtorak concerned proceedings before the CJEU and GC and the role of court referendaries. Lectures given by foreign speakers concerned the systematic position and role of the assistant in the administrative court, methodology of work in the administrative court, as well as perspectives of professional development of judge assistants in the Czech Republic, Germany and Lithuania.

### ACA-EUROPE

In 2019, judges and court clerks participated in seminars and working groups.

The Vice-President of the SAC – President of the General Administrative Chamber and the Head of the Domestic and Foreign Relations Team of the SAC participated in the ACA-Europe seminar How our courts make decisions: The decision-making processes of Supreme Administrative Courts, organised in Dublin, in **March 2019** in cooperation with the Supreme Court of Ireland.

In **May 2019**, the Vice-President of the SAC – President of the General Administrative Chamber and the Head of the Domestic and Foreign Relations Team of the SAC participated in the annual General Assembly of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and in the seminar Functions of and Access to Supreme Administrative Courts, organised

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*Within the Exchange Programmes of international and European associations IASAJ, ACA-Europe and EJTN, as well as bilateral partnerships total of 13 administrative judges were staying in 2019 in the SAC and VACs in Gliwice, Kraków and Warszawa.*

in Berlin, in cooperation with the Federal Administrative Court and the Supreme Administrative Court of Berlin-Brandenburg. The Head of the Domestic and Foreign Relations Team of the SAC participated in meetings of the ACA-Europe working group for development and improvement of the database of judicial decisions of administrative courts JuriFast organised in Brussels (**May, December 2019**).

The judge Cécile Renault from the Council of State of France underwent, within the programme implemented within the ACA-Europe judges exchange programme, internship at the SAC and the Kraków VAC in **July 2019**. The programme of the internship at the SAC covered meetings with the Vice-President of the SAC – the President of the General Administrative Chamber, the Director of the Judicial Decisions Bureau of the SAC, the Head of the 4<sup>th</sup> Division of the Judicial Decisions Bureau of the SAC, as well as with the Deputy President of the Court Information Division of the SAC, as well as a visit at the Constitutional Tribunal, the Supreme Court, the Office of the Commissioner for Human Rights and at the Voivodship Administrative Court in Warsaw. The programme of the internship at the Voivodship Administrative Court in Kraków covered, among others, meetings with the President and the Vice-President of this Court, participation as a member of the audience in hearings before the VAC, as well as a visit at the Jagiellonian University.

The SAC judge adjudicating at the Financial Chamber in **September 2019** represented the SAC during the ACA-Europe seminar devoted to the issue of the access to administrative courts from the point of view of structure thereof, costs of proceedings and tools facilitating or hindering access to the court, organised in Brno in cooperation with the Supreme Administrative Court of the Czech Republic.

As a member of ACA-Europe, the SAC publishes selected decisions involving European law in the JuriFast database and provides ongoing English-language updates on the Polish administrative courts system

on the “Tour of Europe” tab at the association’s website. The SAC also participates actively in exchanging information on legal issues related to the jurisdiction of administrative courts at the ACA-Europe discussion forum, as well as prepares questionnaires and national reports for the purposes of seminars and colloquiums.

The Vice-President of the SAC – the President of the General Administrative Chamber acts as the treasurer in the ACA-Europe Management Board and in this role participated in 2019 in ACA-Europe Management Board meetings (**May, September 2019**). He also took part in the ACA-Europe working group meeting in Brussels (**July, October 2019**) dealing with comparative, cross-sectional studies for the purposes of compiling the European Commission’s Justice Scoreboard.

### **IASAJ**

The Vice-President of the SAC – the President of the Commercial Chamber and the SAC judge – the Deputy of the President of the 2<sup>nd</sup> Division of the Financial Chamber, responsible for the system computerising proceedings before administrative courts, participated in **June 2019** in the 13<sup>th</sup> IASAJ Congress *Public Law and New Digital Technologies* and in the meeting of the Management Board and the General Assembly of IASAJ, organised in cooperation with the Federal Court of Administrative Justice, Mexico. The SSAC of Poland remained in the composition of the Management Committee – limited management executive committee of the IASAJ – for another tenure until 2022.

In **July 2019**, within the internship exchange programme of administrative courts’ judges organised by IASAJ in the SAC and VAC, judge Dario Simeoli from the Council of State of Italy stayed in Kraków. The internship programme covered meetings with the Vice-President of the SAC – the President of the General Administrative Chamber, presidents of divisions of the Commercial Chamber, the President of the Court

Information Division of the SAC, the Head of the 2<sup>nd</sup> Division of the Judicial Decisions Bureau of the SAC, working meetings with judges and participation as a member of the audience in court hearings, and visit at the Voivodship Administrative Court in Warsaw, the Constitutional Tribunal, the Supreme Court, the Office of the Commissioner for Human Rights, as well as meetings with representatives of the Institute of Urban and Regional Development at the Ministry of Investment and Economic Development and representatives of the Client Earth Lawyers for the Earth Foundation.

Whereas in **September 2019**, the SAC judge – the Head of the European Law Division in the Judicial Decisions Bureau of the SAC stayed at the internship at the Supreme People’s Court of China. The internship covered meetings with, among others, the President of the Administrative Division of the Supreme People’s Court and the Deputy Director and employees of the International Cooperation Department of this Court, as well as visits at the Information Management Centre, the Ministry of Justice, the National Judges College, the Intellectual Property Court and the China University of Political Science and Law.

## EJTN

In 2019, the SAC implemented the Cooperation Agreement with the European Judicial Training Network concluded in November 2016, under which judges of Polish administrative courts took part in 2019 in training projects – seminars, internships and study visits – organised by the Network and foreign judges underwent general and specialized internships at the SAC and voivodship administrative courts under supervision of SAC and VAC judges.

In **April 2019** the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC attended a meeting of contact persons of member and partner institutions of the EJTN organised in Lisbon, at the Training Centre for Judges and [Public] Prosecutors.

In **May 2019**, a specialized SAC internship in the scope of the tax law was attended by Maria Stella Boscarino – judge of the Regional Administrative Court for Sicily (Italy) and Britta Schwemmer – judge of the Financial Court in Nürnberg (Germany). The programme included meetings with the President of the 2<sup>nd</sup> Division of the Financial Chamber, judges adjudicating in tax cases, Deputy Director of the Judicial Decisions Bureau of the SAC, the President and the Vice-President of the Warsaw VAC and President of the 3<sup>rd</sup> Division of the Warsaw VAC – the division competent in tax cases, and participated in court hearings as a member of the audience. The internship also included visits at the Office of the Commissioner for Human Rights and the Supreme Court.

Also in **May 2019** a specialised internship in the scope of the environment protection and spatial management law at the SAC was attended by judge Reinhard Wilke – the Deputy of the President of the 1<sup>st</sup> Senate of the Schleswig-Holstein Higher Administrative Court in Schleswig (Germany). The internship programme covered working meetings at the General Administrative Chamber of the SAC and its 2<sup>nd</sup> Division competent in cases regarding environment protection and spatial management, meeting with the President and the Vice-President of the Warsaw VAC and the President of the 4<sup>th</sup> Division of this Court competent in cases regarding environment protection and spatial management, meetings with Heads of the 2<sup>nd</sup> Division and the 4<sup>th</sup> Division at the Judicial Decisions Bureau of the SAC, participation as a member of the audience in hearings at the SAC and VAC and visits at the Office of the Commissioner of the Human Rights, at the Office of Architecture and Spatial Planning of the capital city of Warsaw, as well as the WWF Foundation Poland and the Client Earth Lawyers for the Earth Foundation.

Whereas, in **June 2019** a specialized refugee law internship at the SAC was attended by Astrid Behler – judge of the Administrative Court in Dresden (1<sup>st</sup> instance court) in Saxony (Germany) and Myriam Car-

valho judge of the 1st instance court - the Administrative Tribunal in Toulouse (France). Judges were hosted by the Vice-President of the SAC – the President of the General Administrative Chamber, the President and the Vice-President of the Warsaw VAC, the President of the 4<sup>th</sup> Division of the Warsaw VAC competent in refugee cases and Heads of the 1<sup>st</sup> and the 2<sup>nd</sup> Divisions of the Judicial Decisions Bureau of the SAC and the President of the Court Information Division. The interns participated as members of the audience in court hearings and visited the Office of the Commissioner for Human Rights, the Helsinki Foundation for Human Rights, the Representation of the United Nations High Commissioner for Refugees in Poland, the Office for Foreigners (UDSC), the Refugee Council and the Centre of the Office for Foreigners – women and children in Warsaw.

At the beginning of **September 2019** a general internship was attended in the SAC by Nélia de Brito – judge of the Administrative and Financial Court in Sintra (Portugal), Carlo Buonauro - judge of the Regional Administrative Court for Campania – Naples (Italy) and Giovanni Tulumello – judge of the Regional Administrative Court for Sicily – Palermo (Italy). The internship programme at the SAC included meetings with the President of the 2<sup>nd</sup> Division of the Financial Chamber of the SAC and judges of the Financial Chamber, the President of the Court Information Division, Heads of the 1st and 4<sup>th</sup> Divisions of the Judicial Divisions Office of the SAC, participation as a member of the audience in court hearings and visits at the Office of the Commissioner for Human Rights and the Supreme Court.

In **October 2019** the general internship was attended by judges from Spain: Maria Elisa Gómez Alvarez – judge of the Administrative Court in Madrid, Jorge Juan Punset Fernandez - judge of the Administrative Court in Oviedo and Luis Carlos Martín Osante - judge of the Administrative Court in Saragossa. Within the internship they met with the Vice-President of the SAC - the President of the General Administra-

tive Chamber, representatives of the Judicial Decisions Bureau and the Court Information Division, working meetings with the SAC judges, participated as a member of the audience in court hearings and visited the Warsaw VAC.

Whereas, in **November 2019** a general internship was attended by Manuela Sinigoi – judge of the Regional Administrative Court for Friuli Venezia Giulia in Trieste (1<sup>st</sup> instance court, Italy) and Agnes Sowa - judge of the Administrative Court in Düsseldorf (1<sup>st</sup> instance court, Germany). The internship programme included meetings with the Vice-President of the SAC – the President of the General Administrative Chamber, the President and Vice-Presidents of the Warsaw VAC, the President of the Court Information Division of the SAC, Heads of Divisions and specialists in the Judicial Decisions Bureau of the SAC, working meetings with VAC and SAC judges, participation in court hearings before the SAC and VAC and visits at the Office of the Commissioner for Human Rights, the Association for Legal Intervention, the Representation of the United Nations High Commissioner for Refugees in Poland (UNHCR), the Refugee Council, the Centre of the Office for Foreigners (UDSC) women and children in Warsaw, as well as working meetings with representatives of UDSC, the Client Earth Lawyers for the Earth Foundation, the Civil Chamber of the Supreme Court and the Liaison Officer of the German Federal Office for Migration and Refugees (BAMF) in Poland.

Also within the cooperation with the EJTN and the National School of Judiciary and Public Prosecution, the seat of the SAC was visited in **June, September and October 2019** by working groups of judges and prosecutors from Austria, Bulgaria, Croatia, France, Germany, Greece, Italy, the Netherlands, Portugal, Romania, Slovenia and Spain staying in Poland within the internship exchange programme of the EJTN.

## EASO

In **January 2019**, the Vice-President of the SAC – the President of the General Administrative Chamber participated in the annual meeting of National Coordinators for Contacts of Judges and Tribunals in Immigration and Asylum Cases organised in Valletta and devoted to discussing the activities of the Office in 2018, as well as the programme of activities of the EASO for 2019.

In **April 2019**, at the seat of the SAC a meeting was held with the representative of the EASO Maria Papaioannou and judges and assistants of judges of the General Administrative Chamber of the SAC and the 4<sup>th</sup> Division of the Warsaw VAC devoted to the presentation of the online database of judicial decisions in the scope of refugee cases (EASO Information and Documentation System on Case Law) kept by the EASO.

In **May 2019**, the SAC and the Warsaw VAC were visited by the group of members of the Serbian Asylum Commission within the programme of study visits for national officials adjudicating in the 2<sup>nd</sup> instance in refugee cases organised by the European Asylum Support Office (EASO).

The programme of the visit included meetings with the Vice-President of the SAC – the President of the General Administrative Chamber, being the national coordinator of contacts with the EASO, the President of the 4<sup>th</sup> Division of the Warsaw VAC competent for refugee cases, senior official at the Courts and Tribunals Division, at the Department of Asylum Support of the EASO, participation in hearings before the SAC and the Warsaw VAC, as well as visits at the European Border and Coast Guard Agency (FRONTEX), the Office of the Commissioner for Human Rights, the Office for Foreigners, the Representation of the United Nations High Commissioner for Refugees in Poland, the Office for Foreigners (UDSC), the Helsinki Foundation for Human Rights and meeting with the president and other members of the Refugee Council.

The subject of the meetings comprised Polish legal regulations concerning asylum, judicial decisions of Polish administrative courts in cases regarding refugees and foreigners, competency and proceedings before the SAC and voivodship administrative courts, and the activities of the EASO cooperation network with members of courts and tribunals. Whereas, the representatives of the Polish administrative courts were presented with legal solutions and practice in the scope of the refugee law in Serbia.

Furthermore, in 2019, judges and court officials participated in workshops and trainings in the scope of the refugee law organised at the seat of the EASO, in Valletta (Malta).

### ERA

As part of cooperation with the Academy of European Law (ERA), in **June 2019** the SAC organised jointly with the ERA the seminar for judges *National Judges and the EU Åarhus Acquis – Focus on Access to Justice*, supported as part of the *Cooperation with National Judges in the field of Environmental Law* programme of the European Union.

The seminar was aimed at providing participants with the introduction to the Åarhus Convention, a review of three pillars of the Åarhus Convention (access to information, public participation in decision-making and access to justice in environmental matters, right to bring a legal challenge – legal standing, the scope and standard of court control, effective remedies, procedural costs, procedural deadlines), as well as presenting the preliminary reference procedure on interpretation and validity in the context of EU judicial protection in environmental matters. The workshops were participated by, among others, lecturers and judges from Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Hungary, Iceland, Latvia, Portugal, Romania, Scotland and Spain.

## THE SUPERIOR COURTS NETWORK (SCN)

In **June 2019**, the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC participated in the 3<sup>rd</sup> Contact Persons Forum of the Superior Courts Network (SCN) organised in Strasbourg at the seat of the ECHR.

During the SAC's participation in the SCN, answers were provided to surveys sent by the ECHR Research and Library Division, and studies and messages concerning ECHR decisions submitted through SCN were distributed among judges.

## JUDICIAL NETWORK OF THE EU (RJUE)

In **September 2019**, the SAC judge – the Vice-President of the Kraków VAC represented during the second meeting of Correspondents for the Judicial Network of the European Union – online platform including decisions of the Court of Justice of the European Union, decisions of domestic courts related to the European Union law and information on application of the international law and the EU law, organised at the seat of the CJEU in Luxembourg. During the meeting, issues concerning the ongoing functioning of the Network, as well as the perspective of development thereof were discussed.

Within the SAC's membership in the Network, access of users from the SAC to the database of the network was administered and selected judicial decisions of the SAC with summaries were posted.

## COOPERATION AND BILATERAL MEETINGS OF THE SAC

### *Federal Administrative Court of Germany*

The partnership with the Federal Administrative Court was initiated in November 2015. Then, it was decided that cooperation would be ex-

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*In 2019 the Supreme Administrative Court of Poland strengthened its partnership and bilateral contacts with counterparts in Czech Republic, France, Germany, Hungary, Latvia and Lithuania.*

ecuted in the form of Polish-German working seminars to be held every two years alternately in Poland and in Germany, as well as in a form of the exchange of judges. Cooperation with the FAC in 2019 had the form of an exchange of judges, as well as another Polish-German working meeting.

In **July 2019**, Professor Dr. Christoph Külpmann, judge of the 4<sup>th</sup> Senate of Appeals of the FAC underwent an internship at the SAC. The programme included meetings with the Vice-President of the SAC – the President of the General Administrative Chamber, the Head of the 2<sup>nd</sup> Division of the Judicial Decisions Office, the President of the Court Information Division, Vice-Presidents of the Warsaw VAC, the President of the 7<sup>th</sup> Division and the Deputy President of the 4<sup>th</sup> Division of the Warsaw VAC, competent in cases in the scope of construction law, environment protection, spatial management, participation as a member of the audience in court hearings and visits at the Constitutional Tribunal, at the Office of the Commissioner for Human Rights, at the Extraordinary Control and Public Affairs Chamber of the Supreme Court, as well as working meetings with representatives of the Institute of Urban and Regional Development and representatives of the WWF Foundation Poland and the Client Earth “Lawyers for the Earth” Foundation.

In **September 2019**, at the seat of the Voivodship Administrative Court in Poznań, the 3<sup>rd</sup> Polish-German working meeting of administrative judges within the cooperation between the SAC and the Federal Administrative Court was held. The aim of the meeting organised by the SAC in close cooperation with the Poznań VAC was to reinforce the exchange of the knowledge and experiences in the scope of the interpretation and application of the administrative law by Polish and German administrative courts. The topic of this year’s meeting concerned the scope and boundaries of judicial independence, the newest case law of Polish and German administrative courts in the scope of the environmental protection law and computerisation before proceedings of administrative courts in both countries.

The meeting was attended by the delegation of the Federal Administrative Court composed of: Prof. Dr. Dr. h.c. Klaus Rennert – the President, Prof. Dr. Andreas Korbmacher – the Vice-President, judges: Dr. Markus Kenntner and Dr. Stefan Langer and Presidents of Higher Administrative Courts of Berlin-Brandenburg (judge Joachim Buchheister), Lower Saxony (Dr. Thomas Smollich), Saxony (judge Erich Künzler) and Thuringia (Dr. Klaus Hinkel). Whereas, the Polish administrative courts were represented by the President of the SAC and the Vice-President of the SAC – the President of the General Administrative Chamber and judges of the SAC and VAC, including the President and the Vice-President of the Poznań VAC and Presidents of Voivodship Administrative Courts in Gliwice, Kraków and Warsaw. Furthermore, the meeting was attended by legal specialists from the Judicial Decisions Bureau of the SAC and the Chancellery of the President of the SAC, including the chief specialist in the Team-Cabinet of the President, representative of the President of the SAC for contacts with the Federal Administrative Court of Germany.

Research assistants of judges of the Federal Administrative Court participated in **October 2019** in the scientific conference of assistants of judges of the SAC *Administrative Court Judge Assistant – Comparative Law and Practical Issues* organised by the SAC.

Whereas, in **November 2019**, at the invitation of the President of the Federal Administrative Court Prof. Dr. Dr. h.c. Klaus Rennert, the judge of the Gliwice VAC underwent an internship at the FAC in Leipzig. The programme of the internship included: meetings with the President of the FAC, judges of the 3<sup>rd</sup>, 8<sup>th</sup> and 9<sup>th</sup> Senate of the FAC, participation in the pre-session deliberations and hearings at the 3<sup>rd</sup> Senate of Appeals in cases in the scope of the transport (railway) law and the food law, participation in hearings at the 2<sup>nd</sup> and 8<sup>th</sup> Senate of the FAC in cases concerning: company retirement-social security pensions, gambling and betting, the civil service law and status of judges

– election of federal judges and visit at the Administrative Court (1<sup>st</sup> instance court) in Leipzig.

### ***Council of State of France***

As a continuation of Polish-French contacts initiated a few years ago, in **September 2019**, at the invitation of the President of the SAC, Warsaw was visited by the delegation of the Council of State of France, under leadership of the Councilor of State Martine de Boisdeffre, the President of the Section of Reports and Analyses, who was accompanied by the members of the Council of State of France: Sophie Caroline de Margerie, Béatrice Bourgeois and Yves Gounin.

Within the visit at the seat of the SAC, a seminar concerning the means of ensuring uniformity of jurisprudence of administrative courts in Poland and in France, the process of appointing administrative court judges and their status, as well as issuing decisions by the administrative judge on the grounds of documents classified by law was organized. On behalf of the SAC, the meeting was attended by, among others: the President of the SAC, Vice-Presidents of the SAC – Presidents of the General Administrative Chamber and the Commercial Chamber, the Director of the Judicial Decisions Bureau, the Vice-President of the Kraków VAC and the chief specialist in the Team-Cabinet of the President responsible for the SAC's contacts with the French Council of State.

Continuation of cooperation between Polish and French judges was agreed on in the form of mutual internships and another seminars and working meetings organised regularly and interchangeably in Poland and in France.

### ***Supreme Administrative Court of Lithuania***

As part of contacts with the Supreme Administrative Court of the Republic of Lithuania, following an invitation of the President of the SAC of Lithuania, Gintaras Kryževičius, in **May 2019**, the President

of the SAC participated in the international scientific conference *New Challenges and Experiences in Administrative Proceedings, organised in Vilnius*. At the conference the President of the SAC gave a lecture on *The cassation-type model of the Polish administrative court proceedings and the exercising of the constitutional right of access to court (fair trial)*. The conference was also attended by representatives of, among others, the General Court of the European Union, the Supreme Administrative Court of Finland and representatives of German, Polish and Lithuanian universities.

Whereas, in **June 2019**, the President of the SAC of Lithuania with a delegation of Lithuanian judges from administrative courts and scientific environment representatives participated in the Polish-Lithuanian seminar *Constitutional argumentation in the jurisprudence of administrative courts*, organised in Warsaw by the SAC in cooperation with the Faculty of Law and Administration of the University of Łódź – Centre for the Theory and Philosophy of Human Rights. The meeting was also attended by representatives of the SAC, the University of Łódź, the Nicolaus Copernicus University in Toruń and the Adam Mickiewicz University in Poznań.

In **October 2019**, the President of the SAC, the Vice-Presidents of the SAC – the Presidents of the General Administrative Chamber and Commercial Chamber with a delegation were hosted by the President of the SAC of Lithuania – Gintaras Kryževičius. Moreover, the delegation visited the Regional Administrative Court in Kaunas, where they met with the President of this Court, Rimantas Giedraitis. During a number of working meetings, participants discussed the system position, competences and organisational structure of administrative courts of both countries, as well as the status of administrative judges, procedure of recruitment for the post of a judge, as well as the principles of proceedings before administrative courts in Poland and Lithuania.

Whereas, assistants of judges of the Lithuanian Supreme Administrative Court also participated in October 2019 in the scientific conference of assistants of judges of the SAC *Administrative Court Judge Assistant – Comparative Law and Practical Issues* organised by the SAC.

### ***Supreme Administrative Court of the Czech Republic***

As a continuation of relations initiated in 2012, assistants of judges of the Czech Supreme Administrative Court participated in **October 2019** in the scientific conference of assistants of judges of the SAC *Administrative Court Judge Assistant – Comparative Law and Practical Issues*, organised by the SAC.

### ***Supreme Court of Hungary***

In **February 2019**, the SAC was visited by a delegation of the Supreme Court of Hungary (Kúria) composed of: Dr Péter Darák (the President of the Supreme Court), Dr Tibor Kalas (the President of the Administrative Division of the Supreme Court) and Prof. András Patyi (the President of the ruling panel at the Administrative Division of the Supreme Court). During meetings with the management of the SAC and judges of the SAC, the structure, organisation and competence of administrative courts in Poland, the length of the administrative court proceedings and the application of the European law by Polish administrative courts were discussed. Furthermore, the organisation of courts in Hungary was presented with a particular consideration of the planned reform aimed at developing administrative courts separate from ordinary courts.

The delegation also visited the Warsaw VAC, where it had a meeting with the management of this Court and was familiarised with the structure and organisation of work of the largest administrative court in Poland, the principles and the recruitment process for the position of an court assessor and an administrative judge, as well as with current challenges occurring in the case law practice of this court.

### ***Supreme Court of Latvia***

In **September 2019**, the SAC was visited by the delegation of the Supreme Court of the Republic of Latvia made of three persons, led by the President of the Court Ivar Bičkovičs. The delegation was invited to visit Poland by the First President of the Supreme Court. The subject of the meeting comprised the structure and principles of functioning of administrative courts in Latvia and Poland, organisational structure of the SAC, competences, functions and tasks of particular Chambers, the Court Information Division of the SAC, the Judicial Decisions Bureau of the SAC and the Chancellery of the President of the SAC. Furthermore, the issue of tools for ensuring uniformity of jurisprudence was discussed with a particular consideration of the procedure of passing resolutions at the SAC and the Supreme Court of Latvia, as well as competence disputes between administrative and civil courts in both countries.

### **VISITS OF FOREIGN DELEGATIONS AND OTHER GROUPS TO THE SAC**

Apart from the visits of Hungarian, Latvian and Lithuanian delegations and group visits within the collaboration with the ETJN and the EASO, the SAC also hosted groups and guests from France, Georgia, Germany, Japan and Romania.

In **February 2019**, the SAC was visited by a group of German judicial apprentices - court referendaries from the Regional Court in Heidelberg, in Baden-Württemberg. During the meeting, the history, structure, position and competences of Polish administrative courts were presented, with a particular consideration of the SAC's tasks and guests were familiarised with selected aspects of the administrative court proceedings, everyday work of the SAC judges and Polish judiciary reforms.

Whereas, in **March 2019**, the SAC was visited by a group of students from the European Law Students' Association (ELSA) from Toulouse staying in Poland on a study exchange. Guests were familiarised with

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*High court judges, students, academics and representatives of public authorities representing various European and Asian countries paid in 2019 visits to the Supreme Administrative Court.*

the history of administrative courts in Poland and the history of the current seat of the SAC, as well as the organisation and competences of Polish administrative courts, with a particular consideration of tasks of the SAC, as well as selected aspects of the administrative court procedure, everyday work of SAC's judges and judiciary reforms in Poland.

Also, in **March 2019**, the SAC was visited by a group of students from the Faculty of Law of the François Rabelais University in Tours led by Prof. Patrick Baleynaud (*Université François-Rabelais de Tours*) – Honorary Consul of the Republic of Poland in Tours and the Co-Director of the School of French Law at the University of Łódź, staying in Poland within the cooperation with Polish universities – the Faculty of Law and Administration of the University of Łódź and the Centre for Studies in Local Government and Development of the University of Warsaw. During the meeting practical aspects of the work of a judge and activity of the SAC were discussed, and the outline of constitutional and statutory regulations concerning administrative judiciary in Poland was presented.

In **September 2019**, the seat of the SAC was visited by Magda Melikishvili from the University in Tbilisi (Georgia) staying at an internship at the Office of the National Council of the Judiciary. During the visit including sightseeing of the Court's building, she was familiarised with basic principles of functioning of the administrative courts and allowed to participate in court hearings as a member of the audience.

In **September 2019**, the SAC hosted the President of the Superior Council of Magistracy in Romania, judge of the Supreme Court Simona Camelia Marcu invited to visit Poland by the National Council of the Judiciary. During the meeting, among others, the structure and principles of functioning of administrative courts in Poland and in Romania were presented, with a particular consideration of the organisational

structure of the SAC, including competences, functions and tasks of particular Chambers of the SAC.

Also in **September 2019**, a delegation of the Higher Regional Court in Koblenz (Germany) made of four persons and led by the President of the Higher Regional Court Marliese Dicke, who was invited to stay in Poland by the President of the Supreme Court managing the Civil Chamber, visited. During the meeting with the representatives of the management of the SAC, the constitutional position, structure and principles of functioning of administrative courts in Poland were presented, including the organisational structure of the SAC, competences, functions and tasks of particular Chambers of the SAC, with a particular consideration of the Commercial Chamber and the Chancellery of the President of the SAC. International contacts of the SAC, including relations of this Court with administrative courts of other states were also discussed. Furthermore, disputes between administrative and civil courts concerning competences in both countries and cases falling between competences of both sections of judiciary, including the scope of the telecommunications law and tender procedures, were discussed.

In **November 2019**, the President of the SAC invited to stay in Warsaw: Prof. Mitsuaki Usui, Emeritus Professor of the Tokyo University of Science, lecturer at the Meiji University Graduate School of Law in Tokyo and Prof. Toshiyoshi Kashiwazaki, Professor of the Graduate School of Innovation Studies at the Tokyo University of Science, president of the Japan Association of Public Finance Law. During their visit they gave lectures for judges, assistants of judges and invited guests regarding the financial law in the Constitution of Japan and appeal proceedings in administrative and tax cases in the Japanese legal system. Furthermore, the programme of the stay also included meetings with the President of the SAC, the Vice-President of the SAC, the President of the Financial Chamber, the Deputy Director of

the Judicial Decisions Bureau, working meetings with SAC judges and participation in a court hearing as a member of the audience. Guests were also hosted at the Supreme Court by the First President of the SC, Presidents of the SC managing the Civil and Criminal Chambers, and the President of the Division of the Labour and Social Insurance Chamber of the SC.

### **PARTICIPATION OF SAC JUDGES AND JUDICIAL OFFICIALS IN OTHER JUDICIAL EVENTS, ASSOCIATIONS AND FORA**

The representatives of the Supreme Administrative Court took part in the important events organised by the European Courts, academia, judicial fora and associations.

In **January 2019**, the SAC judge – the Vice-President of the Kraków VAC represented, on behalf of the President of the SAC, the Polish administrative judiciary during the solemn opening of the Judicial Year 2019 of the European Court of Human Rights in Strasbourg and participated in the seminar *Reinforcing Trust in the Judiciary*.

In **May 2019**, the SAC judge – the Head of the European Law Division at the SAC's Judicial Decisions Bureau and the chief specialist in the Domestic and Foreign Relations Team at the Chancellery of the President of SAC participated in the 19<sup>th</sup> German Congress of Administrative Judiciary (*Deutscher Verwaltungsgerichtstag*), organised in Darmstadt (Hessen) by the German Administrative Judges Association (*Bund Deutscher Verwaltungsrichter und Verwaltungsrichterrinnen*) in cooperation with the Administrative Court in Darmstadt. Within the international panel co-organised by the working group *Independence and Effectiveness* of the Association of European Administrative Judges (**AEAJ**) the SAC judge gave a lecture entitled *Discretionary Power of a Judge*.

In **June 2019**, the SAC judge – the Deputy President of the 2<sup>nd</sup> Division of the Financial Chamber, responsible for the system computerising proceedings before administrative courts, participated in the international conference *Digitalisation in Visegrád Group States*, or-

rganised in Budapest by the Hungarian Academy of Justice. During the first day of the session the Polish delegate participated in discussion panels concerning digital trainings in judicature and digital tools used in the courtroom. The programme of the second day of conference covered participation in workshops devoted to electronic communication and administration and digital solutions in the scope of managing courts.

In **July 2019**, the SAC judge – the Deputy President of the 2<sup>nd</sup> Division of the Financial Chamber and the SAC judge adjudicating in the Financial Chamber participated as lecturers in the scientific conference *Court Control of Tax and Customs Disputes: Problems, Challenges, Priorities* organised in Kiev by the Administrative Court of Cassation at the Supreme Court of Ukraine.

In **September 2019**, the SAC Vice-President – the President of the General Administrative Chamber represented the President of the SAC in the conference of Presidents of Supreme Courts of Member States of the Council of Europe organised in Paris by the Constitutional Council, the Council of State and the Court of Cassation in France. During the session the right to a fair trial, relations between domestic courts and the European Court of Human Rights, as well as issues concerning the right to freedom of speech in the context of private and family life protection were discussed.

Also in **September 2019**, two SAC judges adjudicating in the General Administrative Chamber of the SAC participated in the annual conference *The role of science in environmental adjudication* of the European Union Forum of Judges for the Environment (EUFJE), organised in Helsinki.

The SAC judge – the Vice-President of the Kraków VAC represented, on behalf of the President of the SAC, the Polish administrative courts

during the symposium entitled *The General Court of the European Union in the digital age* organised in **September 2019**, at the seat of the CJEU in Luxembourg, on the occasion of the 30<sup>th</sup> anniversary of establishment of the General Court of the European Union. During the meeting, the impact of digital technologies on the access to court and improving the effectiveness of proceedings, as well as the quality of issued decisions were discussed.

In **November 2019**, the Vice-President of the SAC – the President of the Commercial Chamber, the Head of the European Law Division at the Judicial Decisions Bureau of the SAC and the SAC judge adjudicating at the SAC's Financial Chamber participated as lecturers in the scientific conference *International Forum of Judges – Judicial protection of the environment and environmental rights* organised at the seat of the Supreme Court of Ukraine – the Administrative Court of Cassation.

Also in **November 2019**, five SAC judges participated in the forum of judges and prosecutors of higher court instances of the European Union Member States, organised by the Court of Justice of the European Union in Luxembourg and devoted to recent CJEU case-law concerning procedural aspects of preliminary ruling proceedings and judicial independence, as well as regarding the horizontal application of the Charter of Fundamental Rights of the European Union, notion of implementation of the Union law and limitations on the exercises of fundamental rights.

## International cooperation of the Voivodship Administrative Courts

In 2019, the voivodship administrative courts also maintained international contacts with administrative courts in Europe and welcomed delegations of judges from other Member States.

Within the implementation of general and specialized internships of foreign judges, on the grounds of the Agreement on cooperation between the SAC and the EJTN, in 2019, the SAC strictly cooperated with Gliwice, Kraków and Warsaw VACs. Last year, the Warsaw VAC participated in the implementation of cooperation with the EASO and within the implementation of the EJTN internships, hosted all interns visiting the SAC in 2019.

Whereas, in 2019, the Poznań VAC co-organised the 3<sup>rd</sup> Polish-German working meeting of administrative judges held within partnership between the SAC and the Federal Administrative Court of Germany. The Białystok VAC was also involved in the practical implementation of the bilateral cooperation of the SAC with the Lithuanian Supreme Administrative Court.

In **February 2019**, Kraków VAC judges participated in the seminar *Mediation and Conciliation* organised by the EJTN in Brussels.

In **April 2019**, the VAC judge delegated to perform judicial duties in the Financial Chamber of the SAC participated in the Multilateral Trainee Programme 2019 for Judges of Administrative Courts, organised in cooperation with the German Foundation for International Legal Cooperation (*Deutsche Stiftung für internationale rechtliche Zusammenarbeit e.V.*) and the Union of German Administrative Judges (*Bund Deutscher Verwaltungsrichter und Verwaltungsrichterrinnen*), which covered participation in introductory seminars in Königswinter by Bonn regarding administrative proceedings and administrative court proceedings in Germany, court administration and legal status of judges, professional associations of judges and also the week-long internship at the Financial Court in Cottbus (Brandenburg).

In **May 2019**, the President of the Białystok VAC together with members of the Board of this Court visited the Vilnius District Administra-

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*In 2019, the voivodship administrative courts maintained international contacts with administrative courts in Europe and welcomed judges from other EU Member States.*

tive Court on the occasion of the 20<sup>th</sup> anniversary of existence thereof connected with inauguration of the court museum. The Polish delegation also visited the Supreme Administrative Court of Lithuania, the Regional Court of the City of Vilnius and the Regional Court of the Vilnius District – Branch Division in Trakai.

Also in **May 2019**, a group of the Serbian Asylum Commission's members staying within the programme of study visits for domestic officials adjudicating in the 2<sup>nd</sup> instance in refugee cases, organised by the EASO, was hosted by the President of the 4<sup>th</sup> Division of the Warsaw VAC and participated in hearings before the 4<sup>th</sup> Division of this Court as members of the audience.

In **June 2019**, the delegation of judges and court assessors of the Poznań VAC, led by the President of the VAC, visited The Higher Administrative Court of Berlin-Brandenburg, within the continuation of the hitherto cooperation developed by both courts in order to reinforce the exchange of knowledge and experiences in the scope of the interpretation and application of the administrative law by Polish and German administrative courts. The subject of the seminar organised within the Polish-German visit was the issue of legal remedies in the case of the lack of activity of an administrative authority and the possibility of administrative courts' operations in Germany in order to accelerate issuance of official decisions, as well as implementation of the rulings of administrative courts; the scope of competences of administrative courts (control of legality of the administration's activities, formulating guidelines concerning the activity of administrative authorities, replacing the authority by the court and definite settlement of the administrative case by the court).

In **June 2019**, the Kraków VAC was visited by a group of students from the Universities in Mainz and Heidelberg. The visit was held within the legal programme *German School of Polish Law* organised by the Faculty of Law and Administration of the Jagiellonian University in co-

operation with the Universities in Mainz and Heidelberg and connected with an intensive Polish language course.

In **June 2019**, the Kraków VAC judge underwent an internship at the Administrative Tribunal in Versailles within the exchange programme for judicial authorities of the EJTN.

Also in **June 2019**, the judge adjudicating in the Kraków VAC participated in the internship at the Administrative Court and the Tax Court in Lisbon organised in cooperation with the EJTN.

In **July 2019**, judge Cécile Renault from the Council of State of France underwent, within the ACA-Europe judges exchange programme, a part of the internship at the Kraków VAC. The programme of the internship included meetings with the President and the Vice-President of this Court and working meetings with judges and participation in court hearings as a member of the audience. Moreover, judge Renault gave a lecture for judges, court referendaries and judge assistants of this Court regarding the role, function and organisation, as well as tasks of the French Council of State.

Also in **July 2019**, within the internship exchange programme of administrative courts' judges organised by the IASAJ at the SAC, judge Dario Simeoli from the Council of State of Italy stayed at the Kraków VAC. The programme of the visit in Kraków included meetings with the President of this Court and working meetings with judges, and participation in court hearings as a member of the audience.

In **July 2019**, the Kraków VAC was also visited by a group of 20 judicial apprentices – court referendaries from the Higher Regional Court in Hamburg, who were familiarised with the functioning of administrative courts in Poland and allowed to participate in court hearings as members of the audience.

Whereas, in **August 2019**, the Kraków VAC was visited by the group of judicial apprentices - court referendaries from the Regional Court in Baden-Baden. Guests were familiarised with the functioning of administrative courts in Poland and participated in court hearings as members of the audience.

Also in **August 2019**, the delegation of judges of the Poznań VAC, led by the Vice-President of the VAC, visited the Financial Court in Lower Saxony within the continuation of the hitherto cooperation. Within the visit, the lecture-discussion panel devoted to selected case law of the CJEU in cases regarding the VAT resolved as a result of requests for preliminary rulings submitted by Polish administrative courts and application in courts of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, was held.

In **September 2019**, administrative employees of the District Administrative Court in Vilnius paid a study visit at the Białystok VAC. Within the visit they met with the President of the VAC and the Court's spokesman, as well as judges, court referendaries, judge assistants and administrative employees, during which experiences related to the functioning of the administrative courts in Poland and Lithuania were shared.

In **September 2019**, judges Nélia de Brito (the Administrative and Financial Court in Sintra, Portugal), Carlo Buonauro (the Regional Administrative Court for Campania – Naples, Italy) and Giovanni Tulumello (the Regional Administrative Court for Sicily – Palermo, Italy), staying at the general internship of the EJTN at the SAC, visited the Kraków VAC, where they were hosted by the Vice-President of the Court.

Also in **September 2019**, the Poznań VAC organised at its seat, in cooperation with the SAC, the 3<sup>rd</sup> Polish-German working meeting of

administrative judges within the cooperation between the SAC and the Federal Administrative Court (*Bundesverwaltungsgericht*), with a participation of the SAC delegation, the Federal Administrative Court and VACs in Poznań, Gliwice, Kraków and Warsaw.

In **September 2019**, the President of the Wrocław VAC participated in the 59<sup>th</sup> Autumn Conference of Presidents of Higher Administrative Courts and Tribunals of German Federal States and the Federal Administrative Court of Germany, organised in Bautzen by the Higher Administrative Court of Saxony.

In **October 2019**, the President of the Kraków VAC hosted judicial apprentices – court referendaries of the Local Court in Wuppertal. Guests were familiarised with the functioning of administrative courts in Poland and participated in court hearings as members of the audience.

In **November 2019**, the Kraków VAC was visited by groups of judicial apprentices – court referendaries of local courts in Krefeld and Essen. Guests were familiarised with the functioning of administrative courts in Poland and participated in court hearings as members of the audience.

Also in **November 2019**, the Poznań VAC was visited by the delegation of the Higher Administrative Court of Lower Saxony in Lüneburg. The subject of the seminar organised within the Polish-German visit was the issue of legal remedies in the case of the lack of activity of an administrative authority and the possibility of administrative courts' operations in Germany in order to accelerate issuance of official decisions, as well as the implementation of judicial decisions of administrative courts; the scope of competences of administrative courts (control of legality of the administration's activities, formulating guidelines concerning the activity of administrative authorities, replacing the authority by the court and definite resolution of the administrative case by the court).

In **November 2019**, the judge of the Kraków VAC participated in the seminar regarding administrative and administrative court procedures in Europe, organised by the EJTN in Rome, in cooperation with the Regional Administrative Court for the Lazio Region.

In **December 2019**, Agnes Sowa – judge of the Administrative Court in Düsseldorf underwent internship at the Gliwice VAC within the cooperation of the SAC with the European Judicial Training Network (EJTN). The programme of the internship included meetings with the President and the Vice-President of the Court in Gliwice, learning about the competences and activities of judicial divisions and the Court Information Division, as well as the principles of assigning cases and setting sessions, organisation of secretariats' work, as well as computerisation of the administrative court proceedings, working meetings with judges, participation in the preliminary deliberations and hearings and in camera. Moreover, judge Sowa gave a lecture for judges, court referendaries and judge assistants of the Gliwice VAC concerning the court system in Germany, including the administrative courts and proceedings before administrative courts.

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